Supreme Court U.S.
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No. 01-757

IN THE

Supreme Court of the United States

SYNGENTA CROP PROTECTION, INC., ROBERT BABB, EDEE TEMPLET, and KENNETH A. DEVUN,

Petitioners,

v.

HURLEY HENSON,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED NOVEMBER 8, 2001
CERTIORARI GRANTED FEBRUARY 19, 2002

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APPENDIX A — RELEVANT DOCKET ENTRIES

1:98cv1150 Henson, et al v. Ciba-Geigy Corp., et al

11/13/98 14 Original file, certified copy of transfer order and docket sheet received from District of MD, LA (doc. 1-Ntc. of Removal; doc. 2- Ntc. of Filing Ntc. of Removal; doc. 3 - Ntc. of Docs. not filed in record see RED FOLDER WITH EXHIBITS; doc. 4- Certf. of Compliance, doc. 5-Ntc. of Docs. not filed in record-see RED FOLDER WITH EXHIBITS A and B, doc. 6-Mtn. to Transfer; doc. 7-Mem. in Support of Mtn. to Transfer; doc. 8-Order dated 10/15/98 setting sched. conf. and status rpt. ddl.; doc. 9-Mtn. and Mem. for Expedited Hrg.; doc. 10-Answer of Ciba-Geigy; doc. 11-Oppo. to Mtn. Transf; doc. 12-Order dated 11/4/98 setting exped. hrg. on 11/6/98; doc. 13-Order granting Mtn. to Transf. to SD, AL; doc. 14-Certif. copy of docket entries, transf. order and case file docs.) (jal) [Entry date 11/24/98] [Edit date 03/04/99]

* * *

11/24/98 16 Joint MOTION by Movants, Giba-Geigy, Robert Babb, Edee Templet, Keneth Devun and Class Counsel of Russell Price, et al to Dismiss ref. Judge Butler (jal) [Entry date 11/30/98]

11/24/98 17 ORDER granting [16-1] joint motion to Dismiss, pursuant to the order entered this date in 94-00647-CB-S it is ORDERED ALL CLMS. BY PLTF'S HENSON GROUP BE DISM.,

as set out (signed by Chief Judge Charles Butler Jr.), ME# 7194; JEOD 11/30/98, copies mailed (jal) [Entry date 11/30/98] (Edit date 01/07/99]

11/30/98 — Case closed (jal)

* * *

12/30/98 20 NOTICE OF APPEAL by Hurley Henson; appealing [17-1] Order Dismissing all clms. by Pltfs w/prej. pursuant to order entered in 94-00647-CB-S (Price) all costs incur. by Deft's are to be taxed to Hany Zody, "Henson Group", Fee Status: $150., #25928, Consent Form due 1/28/99 Appeal record due on 2/1/99 (jal) [Entry date 01/07/99] [Edit date 02/17/99]

* * *

10/28/99 21 ORDER OF USCA (certified copy) re: Appellee's Motion to Consolidate Appeal No. 99-6130 (94-00647) and 99-6021 (98-1150-CB-S) is GRANTED. (jal) [Entry date 11/03/99]

1:94cv647 Price, et al v. Ciba-Geigy

BEGIN VOL. 1

8/26/94 — CASE ASSIGNED to Mag. Judge William H. Steele (adk)

8/26/94 1 NOTICE OF REMOVAL filed with Amended Complaint; FILING FEE $ 120.00 RECEIPT # 12289 (adk)

* * *

8/29/94 6 MOTION by Ciba-Geigy to Conditionally Certify Class for purposes of settlement, and preliminarily approving the proposed settlement and direct class notice; referred to Judge Butler (lps) [Entry date 08/31/94]

8/29/94 7 MEMORANDUM by Ciba-Geigy in support of [6-1] motion to Conditionally Certify Class for purposes of settlement (lps) [Entry date 08/31/94]

8/29/94 8 JOINT MOTION by parties to establish an interim medical monitoring treatment and compensation program and to establish a mechanism to reimburse class counsel's fees and expenses; referred to Judge Butler (lps) [Entry date 08/31/94]

Appendix A

8/29/94 9 MEMORANDUM by Russell Price, Leslie E. Hoven, Jack H. Woodward, Grady W. Brown, Joe W. Bowman, Ciba-Geigy in support of [8-1] joint motion to establish an interim medical monitoring treatment and compensation program and to establish a mechanism to reimburse class coulsel's fees and expenses (lps) [Entry date 08/31/94]

8/29/94 — Motion(s) referred: [8-1] joint motion to establish an interim medical monitoring treatment and compensation program and to establish a mechanism to reimburse class counsel's fees and expenses referred to Chief Judge Charles R. Butler Jr., [6-1] motion to Conditionally Certify Class for purposes of settlement referred to Chief Judge Charles R. Butler Jr. (lps) [Entry date 08/31/94]

8/29/94 10 **FOLDER 1** ORDER granting [6-1] motion to Conditionally Certify Class for purposes of settlement; identifying terms set out in Settlement agreement and identifying class and approving notice to class set notice to class deadline for 12/16/94, set filing of papers in support of settlement deadline for 1/6/95, set Entry of Appearance by Settlement Class deadline for 12/16/94, set notice of intent to appear deadline for 12/16/94, set objections to settlement deadline for 1/6/95, set response to objections deadline for 1/6/95; fairness hearing of the Stipulation of Settlement is set for January 23, 1995 at 9:00 (signed by Chief Judge Charles R. Butler Jr.)

Appendix A

(STIPULATION, OF AGREEMENT IN RED FOLDER); certified copies mailed to counsel of record (lps) (Entry date 08/31/94] (Edit date 08/31/94]

8/29/94 11 **CONTINUE VOL. 1** ORDER granting [8-1] joint motion to establish an interim medical monitoring treatment and compensation program and to establish a mechanism to reimburse class counsel's fees and expenses as set out in the Stipulation of Settlement dated August 26, 1994; certified copies provided counsel on 8/29/94 (signed by Chief Judge Charles R. Butler Jr. on 8/29/94) (lps) [Entry date 08/31/94]

* * *

9/1/94 18 **FOLDER 2** ORDER granting [16-1] joint motion for an order directing class notice of the proposed settlement; parties are to provide class notice of the proposed settlement as set out in Exhibits A and B (Notice of Proposed Settlement of Class Action and Fairness Hearing; and Legal Notification Program for Galecron); order shall not preclude the parties for taking further steps to publicize settlement. Costs of providing this notice will be borne exclusively by defendant *(NOTE: EXHIBITS A AND B, as identified herein, are in RED FOLDER)*; certified copies furnished counsel (signed by Chief Judge Charles R. Butler Jr. on 9/1/94) (lps) [Entry date 09/02/94]

* * *

Appendix A

CONTINUE VOL. II

12/16/94 36 MOTION to Intervene by Hurley Henson (wet) [Entry date 12/30/94]

12/16/94 37 MEMORANDUM by Hurley Henson in support of [36-1] motion to Intervene by Hurley Henson; referred to Judge Butler (wet) [Entry date 12/30/94]

END VOL. II

* * *

BEGIN VOL. V

1/24/95 55 STIPULATION Ciba-Geigy and Class Counsel; referred to Judge Butler. (wet) [Entry date 01/25/95]

* * *

1/30/95 67 STIPULATION between class counsel, the Carpenter and Henson Groups, heretofore the Carpenter and Henson Objectors, and defendant, Ciba-Geigy Corporation, amending stipulation of settlement, filed in open court. (wet) [Entry date 02/07/95] **END VOL. V**

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1/30/95 — **BEGIN VOL. XI ENVELOPE 1** Fairness hearing held this date by Judge Butler; attorneys' fee motions to be filed nlt 2/13/95 & reponses within 1 week thereafter; proposed FOF & COL to filed within 20 days. *(TRANSCRIPT IN RED FOLDER) (PLAINTIFF'S EXHIBITS IN ENVELOPE)* (wet) [Entry date 02/07/95] [Edit date 11/05/99] **END. VOL. XI**

* * *

CONTINUE VOL. VII

3/31/95 85 JUDGMENT entered in accordance with separate order entered 3/31/95 approving the parties Stipulation of Settlement and establishing the Findings of Fact and Conclusions of Law. Court shall retain jurisdiction with respect to future performance of, and any claims related to performance of, the settlement agreement and judgment; copies mailed 04/04/95; (signed by Chief Judge Charles R. Butler Jr.); J/E #4113 Judgment EOD: 04/04/95. (wet) [Entry date 04/04/95]

* * *

6/29/95 93 ORDER entered on joint motion as follows: ORDERED that the Court approves sum of $384,332.74 to be deducted from initial deposit to the DCA Fund & sum of $1,377,143.53 to be deducted from initial deposit to the MMT Fund pursuant to Paragraphs F of Exhibits "A" and "C" of the 8/26/94 stipulation of settlement.

Appendix A

Further ORDERED that sum of $29,615,667.26 be deposited into the DCA Fund & the sum of $3,622,856.47 be deposited into the MMT Fund pursuant to Exhibit "B" of the 8/26/94 stipulation of settlement. Further ORDERED that Ciba Geigy is to transfer said funds to the Administrator, State Mutual Life Assurance Company of America, by wire deposit to the Bankers Trust Company of New York, New York in accounts designated by the said State Mutual Life Assurance Company of America; copies mailed 7/6/95; (signed by Chief Judge Charles R. Butler Jr.) (wet) [Entry date 07/06/95]

* * *

CONTINUE VOL. VIII

6/6/96 113 ORDER granting [111-1] joint motion for order approving amendment to the stipulation of settlement (signed by Chief Judge Charles R. Butler Jr.) (adk) [Entry date 06/11/96]

6/6/96 122 STIPULATION of Settlement by Russell Price, Ciba-Geigy docketed pursuant to Order at Doc. 113 (mnp) (Entry date 09/19/96]

* * *

10/31/96 132 ORDER, referring to [128-1] motion for Approval of Stipulation is GRANTED and parties' Stipulation is APRPOVED (signed by Chief Judge Charles Butler Jr.) mailed 11/6/96 (sa) [Entry date 11/06/96]

* * *

Appendix A

9/25/98 151 MOTION by Russell Price, Leslie E. Hoven, Jack H. Woodward, Grady W. Brown, Joe W. Bowman, Alta Woodword, Jennie Ropp Brown, Martha Annie Bowman, Willie Gates, Garry Lynn Landrum for Sanctions and to enforce judgment/settlement agreement for injunctive relief and to have Hany A. Zohdy held in contempt; Ref. to J/Butler (mpp) [Entry date 09/30/98]

9/25/98 152 MEMORANDUM by Russell Price, Leslie E. Hoven, Jack H. Woodward, Grady W. Brown, Joe W. Bowman, Alta Woodword, Jennie Ropp Brown, Martha Annie Bowman, Willie Gates, Garry Lynn Landrum in support of [151-1] motion for Sanctions, [151-2] motion to enforce judgment/settlement agreement for injunctive relief; Ref. to J/Butler (mpp) (Entry date 10/01/98]

10/26/98 153 ORDER, set for Hany A. Zohdy to Show Cause Deadline for 11/13/98 as to Mtn. for Sanctions, the ptys to the state court action Response to Injunction agst state court when cont. despite the stlmt., set to 11/13/98 for (151-1] motion for Sanctions, as set out (signed by Chief Judge Charles Butler Jr.) copies mailed (jal) [Edit date 11/03/99] **END VOL. VIII**

11/13/98 154 **BEGIN VOL. IX** RESPONSE by Hurley Henson to [153-1] order set for Hany A. Zohdy to Show Cause Deadline for 11/13/98 as to Mtn. for Sanctions, and Reply

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to [151-1] motion for Injunction and Sanctions, ref. Judge Butler (jal) (Entry date 11/16/98]

11/13/98 155 MEMORANDUM by Ciba-Geigy in support of [151-1] Class Counsel's motion for Sanctions, to enforce settlement agreement, for Injunctive relief and to have Hany Zohdy held in contempt, ref. Judge Butler (jal) [Entry date 11/16/98]

11/16/98 — Order 153 setting show cause to sanctions for Hany Zohdy, mailed to Jane C. Sachs, Esq., St. Joseph, MO, returned "not deliverable" (no forwarding address) (jal)

11/24/98 156 ORDER granting/enforce terms of [143-1] stipulation, it is ORDERED Hany A. Zohdy pay all costs incurred by the Hurley defts. subsequent to the Approval date for the Price Stipulation of stlmt. 8/26/94 set Hurley Deft's Motion Filing deadline to 12/22/98 reflecting costs as further sets out (signed by Chief Judge Charles Jr.) copies mailed (jal) [Entry date 11/25/98]

* * *

1/8/99 160 ORDER pursuant to Court's Order of 11/25/98 which deft's order to file stmtns of costs, as set out, it is ORDERED Hany Zohdy pay $27,183.79, set Zohdy deadline for 1/25/99, Clk. of Court disburse Adams & Reese ($14,042.82) and Kaye, Scholer, Fierman, Hays & Handler ($13,140.97), Clk. instr. to

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notify Louisiana State Bar and Supreme Court of LA of Hany Zohdy sanctions, as set out, copies to all ptys, Louisiana State Bar and Supreme Court of LA, Financial Div. (signed by Chief Judge Charles Butler Jr.) (jal)

* * *

1/27/99 163 ORDER denying [161-1] motion for written reasons for jgm. denying [162-1] motion for Reconsideration of [160-1] order set Zohdy deadline for 1/25/99 (signed by Chief Judge Charles Butler Jr.); copies mailed (cmm)

1/28/99 — Note to docket: Order entered 1/26/99 revoking pro hac vice admissions for attorneys Hany A. Zohdy, Joe E. Thompson, Rolfe H. McCollister, and D. Rex English, ME #7328 (jlr) [Edit date 01/28/99]

* * *

2/10/99 166 NOTICE OF APPEAL by Hurley Henson; appealing [156-1] order , [160-1] order , [163-1] order Fee Status: $150.00 Receipt #26338 Appeal record due on 3/12/99 (eec) [Entry date 02/12/99]

2/10/99 167 MOTION by Hurley Henson to Stay Enforcement of Judgment Pending Appeal and to Set Appeal Bond or Substitute Bond With Security Interest Ref. to J/Butler 2/12/99 (eec) [Entry date 02/12/99]

* * *

Appendix A

2/12/99 Notice of appeal and certified copy of docket to USCA: [166-1] appeal by Hurley Henson Copies mailed to all counsel of record 2-12-99 (eec)

* * *

10/28/99 177 ORDER OF USCA (certified copy) as to Appellee's Motion to Consolidate Appeal No. 99-6130 (94-647-CB) with Appeal No. 99-6021 (98-1150-CB-S) is Granted. (jal) [Entry date 11/03/99]

11/8/99 178 ORDER granting [167-1] motion to Stay Enforcement of Judgment Pending Appeal and to Set Appeal Bond or Substitute Bond With Security Interest, the Court hereby sets the amt. of bond to $31,216, it is Ordered that the movant post bond by 12/6/99, upon posting of the bond the Jgm. entered on 1/8/99 will be stayed while appeal is taken, as set out (signed by Chief Judge Charles Butler Jr.) copies to all ptys, certf. to 11th Cir. (jal) [Entry date 11/09/99]

APPENDIX B — PER CURIAM OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DATED AND FILED AUGUST 14, 2001

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 99-6021
D. C. Docket No. 98-01150-CV-CB

HURLEY HENSON,

Plaintiff-Appellant,

versus

CIBA-GEIGY CORPORATION,
ROBERT BABB, et al.,

Defendants-Appellees.

No. 99-6130
D. C. Docket No. 94-00647-CV-CB-S

RUSSELL PRICE, et al., on behalf of themselves and others similarly,

Plaintiffs-Appellants,

Appendix B

HURLEY HENSON,

Movant-Appellant,

versus

CIBA-GEIGY CORPORATION, a corporation,

Defendant-Appellee.

Appeals from the United States District Court
for the Southern District of Alabama

(August 14, 2001)

Before EDMONDSON, CARNES and COX, Circuit Judges.

PER CURIAM:

These consolidated appeals arise from two actions, both of which originally asserted various tort claims arising from Ciba-Geigy Corporation's manufacture and sale of a chlorodimeform-based insecticide, Galecron. The principal issue presented is whether the district court had removal jurisdiction under 28 U.S.C. § 1441 and the All Writs Act, 28 U.S.C. § 1651, over a later action solely because prosecuting that action violated a settlement stipulation in an earlier action already before the court. We hold that it did not.

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Background

The first of the two actions, *Price v. Ciba-Geigy Corp.*, was originally filed in the circuit court of Mobile County, Alabama. The defendants later removed it to the Southern District of Alabama, which certified a nationwide class and approved a complicated, structured settlement. The second, *Henson v. Ciba-Geigy Corp.*, originated in state district court in Iberville Parish, Louisiana. The Louisiana court stayed *Henson* after its named plaintiff and others successfully intervened in *Price* (where they were called the Henson interveners) and participated in the *Price* settlement. The settlement stipulation in the *Price* action had a clause requiring *Henson*'s dismissal:

> CLASS COUNSEL hereby stipulates that the RELATED CASE, including any and all claims (including, without limitation any CLAIMS defined herein) against CIBA GEIGY CORPORATION and individual defendants . . . shall be dismissed, with prejudice, as of the APPROVAL DATE.

(R.7-84-Ex. A at 18.) "Related case" means, according to the stipulation, "*Hurley Henson, et al v. Ciba-Geigy Corporation, et al* / Docket No. 43,620, 18th Judicial District Court, Parish of Iberville, State of Louisiana." (*Id.* at 15.)

Following the approval of the *Price* settlement, "class counsel" (lawyers for the original *Price* plaintiffs) complied with the stipulation and prompted the Louisiana state district court to enter an order to show cause why the action should

not be dismissed because of the stipulation. A hearing before the Louisiana district court ensued. Hany Zohdy, a Louisiana lawyer who represented the Henson interveners in the *Price* proceedings, told the Louisiana court that the *Price* settlement required dismissal only of claims concerning chlorodimeform and not claims about other chemicals handled by Ciba-Geigy. That was incorrect, of course, because the settlement stipulation plainly named the entire *Henson* action by docket number and said nothing about dismissing only certain claims.[1] Zohdy's representation nonetheless successfully misled the Louisiana court into inviting the Henson plaintiffs to amend their petition to assert tort claims arising from exposure to Atrazine, another toxic Ciba-Geigy product.

This amendment prompted Ciba-Geigy (and three individual defendants, all diversity-defeating Louisiana residents, who were also named in *Henson*) to remove the action to the Middle District of Louisiana under 28 U.S.C. § 1441(a), asserting federal jurisdiction based on the All Writs Act, 28 U.S.C. § 1651.[2] The defendants immediately requested a transfer to the Southern District of Alabama under 28 U.S.C. § 1404(a), which was granted. Following the transfer, the Southern District dismissed *Henson* as barred

1. In an earlier motion filed before the same Louisiana court, Zohdy had explained that "the definition of 'Related Case' found in the Stipulation of Settlement is without doubt an unambiguous reference to the instant case." (Mem. Supp. Mot. Lift Stay at 2.)

2. In addition to the lack of complete diversity, Ciba-Geigy could not have removed by asserting jurisdiction under 28 U.S.C. § 1332 because the notice of removal was filed more than one year after the action's commencement. *See* 28 U.S.C. § 1446(b).

by the *Price* settlement. Exercising jurisdiction in the *Price* action itself, moreover, the Southern District ordered Zohdy to pay about $27,000 to Ciba-Geigy for the legal fees it incurred in enforcing the *Price* settlement despite Zohdy's efforts to thwart it. These are the rulings that the *Henson* plaintiffs and Zohdy appeal.

Whether the district court had removal jurisdiction is a question we review de novo. *Singleton v. Apfel*, 231 F.3d 853, 856 (11th Cir. 2000). "We review the district court's construction of the [settlement stipulation] de novo." *Waters v. Int'l Precious Metals Corp.*, 237 F.3d 1273, 1277 (11th Cir. 2001). Whether the district court properly imposed sanctions for violation of a court-adopted stipulation of settlement we review for abuse of discretion only. *See Abbott Labs. v. Unlimited Beverages, Inc.*, 218 F.3d 1238, 1240 (11th Cir. 2000).

Discussion

Sanctions on Zohdy

Zohdy challenges the sanctions order on three meritless grounds. First, he says, the district court lacked jurisdiction to sanction him. Not so, because he was counsel of record in *Price*, the action in which he signed the settlement stipulation and in which he was sanctioned for violating the settlement. *See Levine v. Comcoa Ltd.*, 70 F.3d 1191, 1192 (11th Cir. 1995). Second, Zohdy argues, the settlement stipulation did not require dismissal of claims relating to Atrazine, and he therefore did not act contrary to the settlement. This contention is meritless; the stipulation language quoted above

explicitly requires dismissal of *all* claims in the *Henson* action, which the stipulation identifies by docket number. Finally, Zohdy asserts that *he* had no obligation to dismiss the *Henson* action because the settlement stipulation puts that onus on "class counsel," who do not include him. Perhaps that is so, but the district court sanctioned Zohdy, a signatory of the stipulation of settlement, for his efforts to undermine the settlement by preventing class counsel from discharging their duties to secure *Henson*'s dismissal. Whether or not Zohdy was specifically responsible for getting *Henson* dismissed, it was within the court's power to effectuate its orders to punish Zohdy for interfering with the settlement's implementation. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 45, 111 S. Ct. 2123, 2133 (1991) (court has inherent power to assess attorney fees on counsel for willful contravention of court order).

Removal Jurisdiction Over Henson

Zohdy's challenge to the district court's subject-matter jurisdiction over *Henson* has more merit. The asserted jurisdictional basis is the All Writs Act, whose pertinent part provides district courts the power to protect their jurisdiction: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). Thus, for example, a district court has the authority under the Act to enjoin a party to litigation before it from prosecuting an action in contravention of a settlement agreement over which the district court has retained jurisdiction. *See In re VMS Secs. Litig.*, 103 F.3d 1317, 1324 (7th Cir. 1996); *White v. Nat'l*

Football League, 41 F.3d 402, 409 (9th Cir. 1994); *Wesch v. Folsom*, 6 F.3d 1465, 1470 (11th Cir. 1993); *Kelly v. Merrill Lynch, Pierce, Fenner & Smith*, 985 F.2d 1067, 1069 (11th Cir. 1993). Whether a district court also has jurisdiction under the All Writs Act over an action removed under § 1441 is a question that is currently unanswered in this circuit.[3]

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3. We have come close. *Pacheco de Perez v. AT & T Co.*, 139 F.3d 1368, 1379 (11th Cir. 1998), concluded that even if All Writs Act removal jurisdiction existed in "exceptional circumstances," the circumstances in that case were not exceptional enough — only the preclusive effect of a federal judgment was at issue. *Id.* And in one of the 2000 presidential election actions, this court found a federal question, but did not "rule out other bases that federal jurisdiction might exist" over a removed action and cited other circuits' cases about the All Writs Act. *Harris v. Fla. Elections Comm'n*, 235 F.3d 578, 580 n.3 (11th Cir. 2000).

The issue is, by contrast, unavoidably presented here. First, there is no other possible ground of federal subject-matter jurisdiction. Ciba-Geigy's removal notice also alleged supplemental jurisdiction, by virtue of *Price*, under 28 U.S.C. § 1367. But § 1367 cannot provide the "original jurisdiction" that § 1441 demands for an action to be removable. *Ahearn v. Charter Township*, 100 F.3d 451, 456 (6th Cir. 1996). Ciba-Geigy did not, furthermore, assert ancillary jurisdiction, if such jurisdiction exists independent of § 1367 (*see Peacock v. Thomas*, 516 U.S. 349, 116 S. Ct. 862 (1996)), and we therefore do not address it as a potential basis. Second, the circumstances here fit the definition of "exceptional" that other circuits' cases imply, since a signatory to a federal settlement stipulation sought to sabotage it. *Cf. In re Agent Orange Prod. Liab. Litig.*, 996 F.2d 1425, 1430-31 (2d Cir. 1993) (absent class members sought to relitigate the settled action, in violation of a release in the settlement).

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The circuits have split in addressing similar questions of federal courts' power under the All Writs Act to protect judgments and control diehard litigants. On one hand, most have read the All Writs Act generously. Presented with statutory removal questions nearly identical to the one posed here, the Sixth and Eighth Circuits have held that state-court actions that could produce judgments undermining federal consent orders — and in one case a state-court action that was merely barred by the preclusive effect of a federal consent decree — are removable under § 1441, with original subject-matter jurisdiction supplied by the All Writs Act. *See Xiong v. State of Minn.*, 195 F.3d 424, 426 (8th Cir. 1999); *Bylinski v. City of Allen Park*, 169 F.3d 1001, 1003 (6th Cir. 1999); *N.A.A.C.P., Minneapolis Branch v. Metro. Council*, 125 F.3d 1171, 1174 (8th Cir. 1997) (removal simply to determine preclusive effect of the federal consent decree), *cert. granted; summarily vacated and remanded for reconsideration in light of Rivet v. Regions Bank*, 522 U.S. 470, 118 S. Ct. 921 (1998), 522 U.S. 1145, 118 S. Ct. 1162 (1998), *reinstated*, 144 F.3d 1168, 1169 (1998); *Sable v. Gen. Motors Corp.*, 90 F.3d 171, 175 (6th Cir. 1996). The Second Circuit has not yet gone that far, but it has repeatedly held that a district court may, on motion of parties to an action over which it has jurisdiction, order a common-law removal (distinct from that authorized by 28 U.S.C. § 1441(a) or other removal statutes) to federal court of a state-court action, even if there is no other basis of federal subject-matter jurisdiction, when the prosecution of the state-court action threatens the integrity of a consent decree or judgment entered in the federal action. *See In re Agent Orange Prod. Liab. Litig.*, 996 F.2d 1425, 1431 (2d Cir. 1993); *United States v. City of N.Y.*, 972 F.2d 464, 469 (2d Cir. 1992); *Yonkers Racing Corp. v. City of*

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Yonkers, 858 F.2d 855, 855 (2d Cir. 1988); *see also United States v. Am. Soc'y of Composers, Authors, & Publishers*, 32 F.3d 727, 731 (2d Cir. 1994) (All Writs Act provides independent ground of federal subject-matter jurisdiction of motion to vacate an arbitral award, when the parties arbitrated according to the terms of a preexisting federal consent decree). The Seventh Circuit has agreed with the Second Circuit, possibly in dicta (while the procedural history is not completely clear from the opinion, it appears that the district court enjoined the state-court actions rather than deeming them "removed"). *In re VMS Secs. Litig.*, 103 F.3d at 1324. The Third Circuit has also embraced the Second Circuit rule, although it declined to find appellate jurisdiction under the All Writs Act to review the district court's refusal to exercise removal jurisdiction under the Act. *Davis v. Glanton*, 107 F.3d 1044, 1047 n.4 (3d Cir. 1997).

On the other hand are the minority of courts that have taken a less expansive view. The Tenth Circuit has held that the All Writs Act does not furnish removal jurisdiction at all because it confers no independent jurisdiction. *See Hillman v. Webley*, 115 F.3d 1461, 1469 (10th Cir. 1997). A Ninth Circuit opinion could be read to reach a similar conclusion. *See Westinghouse Elec. Corp. v. Newman & Holtzinger, P.C.*, 992 F.2d 932, 937 (9th Cir. 1993) (state-court action alleging breach of the agreement that led to a federal court's consent protective order was not removable, both because it did not concern the interpretation of the protective order itself and because the All Writs Act "may be invoked by a district court only in aid of jurisdiction which it already has"). Some academic opinion tends to reject the expansive view of the All Writs Act preferred by the Second, Sixth, and Eighth

Circuits. *See* Joan Steinman, *The Newest Frontier of Judicial Activism: Removal Under the All Writs Act*, 80 B.U.L. Rev. 773 (2000); Lonny Sheinkopf Hoffman, *Removal Jurisdiction and the All Writs Act*, 148 U. Pa. L. Rev. 401 (1999).

We tend toward the Tenth Circuit camp and conclude that the district court lacked removal jurisdiction over the *Henson* case. Two settled principles, one about the prerequisites of § 1441 removal, and another about the All Writs Act, lead us to this conclusion. First, § 1441(a) authorizes removal only of actions "of which the district courts of the United States have original jurisdiction." 28 U.S.C. § 1441(a). That phrase means that actions are not removable unless they "originally could have been filed in federal court." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392, 107 S. Ct. 2425, 2429 (1987). The implication of that rule here is that removal is proper only if the All Writs Act could have furnished subject-matter jurisdiction over the *Henson* action if it had first been filed in federal court. And, second, the Act does not provide such jurisdiction. The All Writs Act authorizes writs "in aid of [the courts'] respective jurisdictions," and thus does not provide an independent basis of federal subject-matter jurisdiction; a plaintiff cannot sue invoking only the court's All Writs power. *Clinton v. Goldsmith*, 119 S. Ct. 1538, 1542 (1999); *see Pa. Bureau of Corr. v. United States Marshals Serv.*, 474 U.S. 34, 40, 106 S. Ct. 355, 360 (1985) (Act authorizes orders protecting the jurisdiction that a federal court has "otherwise acquired"); *McIntire v. Wood*, 11 U.S. (7 Cranch) 504, 504 (1813) (no jurisdiction under contemporary All Writs Act over action seeking writ of mandamus against Ohio official based on federal law); *see generally* Hoffman, *supra*, at 433-39 (history

of All Writs Act strongly implies that it is not an independent source of subject-matter jurisdiction). Section 1441 and the All Writs Act do not, therefore, together provide a right to remove actions such as *Henson*.

The most troubling counterargument, and the one that the Second, Sixth, and Eighth Circuits ultimately rely on, is that the All Writs Act is jurisdictional caulk — it plugs the cracks in federal jurisdiction through which crafty litigants can escape the effect of a federal order. *See United States v. N.Y. Tel. Co.*, 434 U.S. 159, 172-73, 98 S. Ct. 364, 372 (1977) (articulating this broad view of the All Writs Act's purpose). Therefore, the argument goes, the Act authorizes any exercise of authority that is convenient for effectuating a federal judgment, including the exercise of removal jurisdiction over a different action whose prosecution is inconsistent with a federal judgment. *See, e.g.*, *In re Agent Orange Prod. Liab. Litig.*, 996 F.2d at 1431. This reasoning is tempting in a case like ours, but it goes too far. Too elastic an interpretation of the All Writs Act perverts it from a tool for effectuating Congress's intent in conferring jurisdiction on the lower federal courts into a device for judicially re-equilibrating a state-federal balance that is Congress's to strike. By requiring complete diversity in § 1332, and by limiting the time for removal of diversity cases to one year after their commencement, Congress has decided that *Henson* does not belong in federal court. The All Writs Act, even as jurisdictional caulk, should not allow us to override Congress's decision unless no other reasonable way appears to ensure that the federal court's orders are heeded. *See Clinton*, 119 S. Ct. at 1543. The district court did not need to exercise jurisdiction over *Henson* when it had the ready remedy of an injunction

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against prosecution of the action, properly issued under the All Writs Act.

All things considered, we conclude that the district court lacked subject-matter jurisdiction over the *Henson* action.

Conclusion

We accordingly vacate the district court's order dismissing *Henson* and remand with instructions for the court to remand *Henson* to Louisiana state court. We do not, however, imply that the district court may not by injunction force *Henson*'s dismissal. We affirm the district court's award of sanctions against Zohdy.

Appendix B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-6021
D. C. Docket No. 98-01150-CV-CB

HURLEY HENSON,

Plaintiff-Appellant,

versus

CIBA-GEIGY CORPORATION,
ROBERT BABB, et al.,

Defendants-Appellees.

No. 99-6130
D. C. Docket No. 94-00647-CV-CB-S

RUSSELL PRICE, et al., on behalf of themselves
and others similarily,

Plaintiffs-Appellants,

HURLEY HENSON,

Movant-Appellant,

versus

CIBA-GEIGY CORPORATION, a corporation,

Defendant-Appellee.

Appendix B

Appeals from the United States District Court
for the Southern District of Alabama

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this Court.

Entered: August 14, 2001
For the Court: Thomas K. Kahn, Clerk
By: McCombs, Elaine

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION IN *PRICE, et al. v. CIBA-GEIGY CORPORATION* DATED AND FILED NOVEMBER 24, 1998

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

CIVIL ACTION NO. 94-0647-CB-S

RUSSELL PRICE, *et al.*, on behalf of themselves and others similarly situated,

Plaintiffs,

v.

CIBA-GEIGY CORPORATION,

Defendant.

ORDER

This matter is before the Court on motions by Class Counsel (Doc. 152) and Defendant Ciba-Geigy (Doc. 155) For Sanctions, To Enforce Settlement Agreement, and to Have Hany A. Zohdy Held in Contempt. In their motions, Class Counsel and Ciba-Geigy also requested this Court to enjoin proceedings in *Hurley Henson, et al. v. Ciba-Geigy Corp., et al.*, No. 43,620, Div. "D" 18th Judicial District Court,

Parish of Iberville, State of Louisiana, then pending in Louisiana State court.[1]

It is clear to this Court that, under the terms of the Stipulation of Settlement in *Price, et al. v. Ciba-Geigy*, the plaintiffs in *Henson*, referred to as the "Henson Group" were required to dismiss the state court action with prejudice as of the approval date of the Stipulation of Settlement. Rather than obey this Court's clear and unambiguous order, the "Henson Group" and their counsel, Hany A. Zohdy, attempted to thwart this Court's jurisdiction by filing an amended complaint in *Henson* in which they put forward claims which they say do not fall within the ambit of the Stipulation of Settlement.

However, the Stipulation of Settlement clearly states that *any and all claims* in the Related Case (*Henson*) shall be dismissed with prejudice. This Court can discern no subtlety in its Order and therefore, the Court finds that Hany A. Zohdy has acted in a manner calculated to offend this Court and in complete defiance of the Court's Order.

This Court ordered Zohdy to show cause why *he* should not be sanctioned for his defiance (Doc. 153). Zohdy responded only that the *Henson* case should not be the subject of an injunction from this Court and, aside from plaintive calls not to sanction his client, did not address the issue of sanctions to be imposed upon him. For these reasons, it is hereby **ORDERED** that the terms of the Stipulation of

1. *Henson, et al. v. Ciba-Geigy, et al.* has since been removed to Federal court and was transferred to this Court. The case is now identified as 98-1150-CB-S.

Settlement be enforced and *Hurley Henson, et al. v. Ciba-Geigy Corp., et al.*, 98-1150-CB-S (S.D. Ala.) be and hereby is **DISMISSED with PREJUDICE**. Additionally, it is hereby **ORDERED** that Hany A. Zohdy pay all costs incurred by the *Hurley* defendants subsequent to the Approval Date for the *Price* Stipulation of Settlement, August 26, 1994. The *Hurley* Defendants are hereby instructed to file a statement reflecting their reasonable costs in defending this case after August 26, 1994 with this Court no later than December 22, 1998.

DONE this the 24th day of November, 1998.

s/ Charles R. Butler, Jr.
CHIEF DISTRICT JUDGE

Appendix C

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

CIVIL ACTION NO. 94-0647-CB-S

RUSSELL PRICE, et al., on behalf of themselves and others similarly situated,

Plaintiffs,

v.

CIBA-GEIGY CORPORATION,

Defendant.

ORDER

Pursuant to the Order entered this day in *Price, et al. v. Ciba Geigy*, 94-00647-CB-S (S.D. Ala.) it is hereby **ORDERED, ADJUDGED, and DECREED** that all claims by Plaintiffs, the "Henson Group" be and hereby are **DISMISSED with PREJUDICE**. Pursuant to the Order entered in *Price*, all costs incurred by Defendants here are to be taxed to Hany A. Zohdy, counsel for Plaintiffs, the "Henson Group".

DONE this the 24th day of November, 1998.

s/ Charles R. Butler, Jr.
CHIEF DISTRICT JUDGE

APPENDIX D — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION IN *HENSON, et al. v. CIBA-GEIGY CORPORATION, et al.* DATED AND FILED NOVEMBER 24, 1998

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

CIVIL ACTION NO. 98-1150-CB-S

HURLEY HENSON, *et al.*,

Plaintiffs,

v.

CIBA-GEIGY CORPORATION, *et al.*,

Defendant.

ORDER

Pursuant to the Order entered this day in *Price, et al. v. Ciba-Geigy*, 94-00647-CB-S (S.D. Ala.) it is hereby **ORDERED, ADJUDGED, and DECREED** that all claims by Plaintiffs, the "Henson Group" be and hereby are **DISMISSED with PREJUDICE**. Pursuant to the Order entered in *Price*, all costs incurred by Defendants here are to be taxed to Hany A. Zohdy, counsel for Plaintiffs, the "Henson Group".

DONE this the 24th day of November, 1998.

s/ Charles R. Butler, Jr.
CHIEF DISTRICT JUDGE

APPENDIX E — STIPULATION OF SETTLEMENT DATED AUGUST 26, 1994

(Revised to Include Enhancements through August 28, 1997)

* * *

D. "APPROVAL DATE" shall mean the date subsequent to the fairness hearing on which the COURT'S final order and judgment becomes final. For purposes of this STIPULATION, the final order and judgment shall be deemed to become final on the later of (i) 10 days after the expiration of the time to appeal, if no appeal is filed; or (ii) if an appeal is filed, on the date on which the final order and judgment is not subject to further judicial review or appeal, either by reason of affirmance by a court of last resort, or by reason of lapse of time or otherwise.

E. "CHLORDIMEFORM" shall mean the chemical described as *N'* - (4-Chloro-*o*-tolyl)-*N*, *N*-dimethylformamidine.

F. "CIBA-GEIGY CORPORATION" shall mean CIBA-GEIGY CORPORATION and any predecessor entities.

G. "CLAIM" shall mean any and all past, present and future claims (known or unknown) by any SETTLEMENT CLASS MEMBER against the DEFENDANT or the ADDITIONAL RELEASEE(S) either arising out of exposure by an EXPOSED PERSON to GALECRON® or on account of a COMPENSABLE MEDICAL CONDITION as defined herein. A CLAIM under this STIPULATION shall include, without limitation, any and all past, present and future claims whether arising under local, state or federal statutory or common or civil law, including, without limitation, any and all manner of actions, causes of action, suits, damages, sums

of money, controversies, agreements, promises, court costs, judgments, attorneys' fees, claims for medical monitoring, claims for consequential damages, claims for equitable relief, and all claims and demands of whatever type in law or equity for (1) personal injury, damage, or death and all forms of mental or emotional harm or risk of harm (including fear or increased risk of contracting any illness) , that are based on, arise out of, or relate to an EXPOSED PERSON'S exposure to GALECRON® or any claim on account of an EXPOSED PERSON'S COMPENSABLE MEDICAL CONDITION as defined herein; (2) wrongful death or survival actions that are based on, arise out of, or relate to an EXPOSED PERSON'S exposure to GALECRON® or to a COMPENSABLE MEDICAL CONDITION as defined herein; (3) loss of support, services, consortium, companionship, society, and other valuable services made by spouses, parents, children, or other relatives of an EXPOSED PERSON, however such claims are denominated, that are based on, arise out of, or relate to an EXPOSED PERSON'S exposure to GALECRON® or to a COMPENSABLE MEDICAL CONDITION as defined herein; and (4) punitive, aggravated, or exemplary damages of any sort that are based on, arise out of, or relate to exposure of an EXPOSED PERSON to GALECRON® or to a COMPENSABLE MEDICAL CONDITION as defined herein, **provided, however, that CLAIMS of spouses, parents, children and other relatives do not include claims by such persons of alleged direct exposure to GALECRON®, unless such person is an EXPOSED PERSON as defined in the STIPULATION; provided, further, that this definition of CLAIM is subject to and limited by the provision set forth in Part XXII of this STIPULATION.**

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H. "CLAIMANT" shall mean any individual SETTLEMENT CLASS MEMBER (or legal representative of a SETTLEMENT CLASS MEMBER) who submits a CLAIM for processing under this STIPULATION.

I. "CLAIMANT'S COUNSEL" shall not mean CLASS COUNSEL, but shall mean any attorney who represents a CLAIMANT for purposes of submitting a CLAIM for processing under this STIPULATION.

J. "CLASS ACTION COMPLAINT" shall mean the removed Complaint filed against the DEFENDANT in United States District Court for the Southern District of Alabama entitled RUSSELL PRICE, *et al* versus CIBA-GEIGY CORPORATION, *et al.*

K. "CLASS COUNSEL" shall mean Charles W. Patrick, Jr., and Timothy E. Eble of the law firm of Ness, Motley, Loadholt, Richardson and Poole, Joseph J. McKernan of the McKernan Law Firm, J. Cecil Gardner and S. C. Middlebrooks, III of the law firm of Gardner, Middlebrooks and Fleming, and Patrick W. Pendley, or other such counsel as may be appointed by the COURT.

L. "COMPENSABLE MEDICAL CONDITION" shall mean one of the medical conditions set forth in Part VI of this STIPULATION.

* * *

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AE. "PLAINTIFF CLASS REPRESENTATIVES" shall mean Russell W. Price, Leslie E. Hoven, Grady W. Brown, Jack Harley Woodward, and Joe H. Bowman.

AF. "PLANT WORKER" shall mean an individual, whether or not employed by CIBA-GEIGY CORPORATION, who in the course of his or her employment at CIBA-GEIGY CORPORATION's St. Gabriel, Louisiana or McIntosh, Alabama sites was exposed to GALECRON®, including, without limitation, individuals who worked in manufacturing, formulating, or packaging GALECRON®, or in the waste disposal of GALECRON®, or in the construction, demolition or maintenance of any facilities used for the foregoing activities at such St. Gabriel, Louisiana or McIntosh, Alabama sites.

AG. "PROCEDURES" shall mean the medical tests, analyses or screening programs set forth in the MEDICAL MONITORING AND TREATMENT PROGRAM, to be performed in accordance with the protocols and standards promulgated in Exhibit "C."

AH. "QUALIFYING CLAIM" shall mean any CLAIM submitted to the ADMINISTRATOR for processing that is determined to qualify for compensation as a COMPENSABLE MEDICAL CONDITION or pursuant to the MEDICAL MONITORING AND TREATMENT PROGRAM.

AI. "RELATED CASE" shall mean:

1. *Hurley Henson, et al v. Ciba-Geigy Corporation, et al*

   Docket No. 43,620, 18th Judicial District Court, Parish of Iberville, State of Louisiana.

AJ. "RELATED PARTIES" shall mean (1) DEFENDANT'S present and former foreign and domestic parents, subsidiaries and affiliates, including, without limitation, Ciba-Geigy Limited; and (2) the foreign and domestic predecessors, successors, transferees, insurers and assigns of DEFENDANT or of individuals and entities referred to in subsection (1) above.

AK. "SCREENING PARTICIPANT" shall mean an EXPOSED PERSON who at the time of MANIFESTATION of a COMPENSABLE MEDICAL CONDITION has participated continuously in the MEDICAL MONITORING AND TREATMENT PROGRAM for each of the three (3) years prior to such MANIFESTATION or if the MEDICAL MONITORING AND TREATMENT PROGRAM shall have been in existence for less than three (3) years as of the time of MANIFESTATION, then for each year since the inception of such MEDICAL MONITORING AND TREATMENT PROGRAM.

AL. "SETTLEMENT CLASS" shall mean the settlement class conditionally certified by the COURT, consisting of all SETTLEMENT CLASS MEMBERS.

AM. "SETTLEMENT CLASS MEMBERS" shall mean (1) all EXPOSED PERSONS, or their legal representatives,

who, as of the date of filing of the CLASS ACTION COMPLAINT, reside in the United States; and (2) all spouses, parents, children, or other relatives of such EXPOSED PERSONS, or their legal representatives, who reside in the United States. The class shall include all such persons who meet these definitions except those who opt-out of this class action by the opt-out deadline set forth in the notice of SETTLEMENT CLASS certification.

AN. "SETTLEMENT DATE" shall mean the date that the COURT enters an Order directing that Notice be provided to members of the SETTLEMENT CLASS.

AO. "STIPULATION" or "STIPULATION OF SETTLEMENT" shall mean the entirety of this agreement, including all the exhibits hereto.

AP. "TERMINATION DATE" shall mean the date set forth in Part XIX.

AQ. "TOTAL OBLIGATION" shall mean CIBA-GEIGY CORPORATION's maximum liability for funding of the DCA FUND under this STIPULATION of **fifty** million dollars **($50,000,000.00).** TOTAL OBLIGATION as defined herein does not apply to the MMT FUND.

II. Certification of SETTLEMENT CLASS, Notice and Dismissal of RELATED CASE

1. Subject to the COURT'S approval, the parties stipulate that a SETTLEMENT CLASS as defined herein shall be certified for settlement purposes only pursuant to Rule 23(b) (3) of the Federal Rules of Civil Procedure,

without prejudice to the parties' ability to contest or oppose class certification for litigation purposes in this action or in any other action or for any other purpose.

2. Notice shall be disseminated in a manner to be agreed upon by DEFENDANT and CLASS COUNSEL and approved by the COURT.

3. The cost of providing adequate notice to the SETTLEMENT CLASS of this STIPULATION OF SETTLEMENT and their options hereunder (including the costs of media advertisements) will be borne exclusively by the DEFENDANT.

4. CLASS COUNSEL hereby stipulates that the RELATED CASE, including any and all claims (including, without limitation any CLAIMS defined herein) against CIBA GEIGY CORPORATION and individual defendants, Edee Templet, Kenneth A. DeVun and Robert Babb, shall be dismissed, with prejudice, as of the APPROVAL DATE, and that such RELATED CASE shall be stayed until the APPROVAL DATE. Further, as of the APPROVAL DATE, CLASS COUNSEL also agrees that such individual defendants shall have no obligations or liability whatsoever under this STIPULATION.

III. Exclusive Remedy

A. All CLAIMS shall be submitted to the ADMINISTRATOR in writing by the CLAIMANT in accordance with the procedures set forth in or developed pursuant to this STIPULATION. Submission of CLAIMS under this STIPULATION shall be the exclusive remedy of

all SETTLEMENT CLASS MEMBERS for any CLAIM against either the DCA or MMT FUNDS, the DEFENDANT or the ADDITIONAL RELEASEE(S), and a CLAIM submitted hereunder shall be in lieu of any other remedy or right of action against the DCA or MMT FUNDS, the DEFENDANT or the ADDITIONAL RELEASEE(S) for such CLAIMS, except as specifically provided in this STIPULATION. Accordingly, no DEFENDANT or ADDITIONAL RELEASEE(S) shall be subject to liability or expense of any kind to any SETTLEMENT CLASS MEMBER with respect to any CLAIM, other than as set forth in this STIPULATION; and each SETTLEMENT CLASS MEMBER, upon the COURT'S entry of an order approving the STIPULATION, shall be enjoined by that order from instituting or maintaining any CLAIM against the DEFENDANT or the ADDITIONAL RELEASEE(S) in any state or federal court or other forum, other than as set forth in this STIPULATION.

B. The COURT shall retain jurisdiction over this case and the DCA and MMT FUNDS and shall use its equitable powers to enforce this STIPULATION and to protect its jurisdiction over this case and all parties and SETTLEMENT CLASS MEMBERS. The COURT shall have jurisdiction over all phases of this STIPULATION.

C. The ADMINISTRATOR, the MEDICAL ADVISORY PANEL, and the EPIDEMIOLOGY PANEL shall be officers of the COURT and shall be entitled to judicial immunity to the full extent permitted by law.

* * *

Appendix E

X. Releases and Dismissal of Actions

A. "DEEMED RELEASE." Approval of this STIPULATION OF SETTLEMENT shall operate as a release by each SETTLEMENT CLASS MEMBER of the DEFENDANT and the ADDITIONAL RELEASEE(S) as of the APPROVAL DATE pursuant to which all CLAIMS by that SETTLEMENT CLASS MEMBER are settled, released and dismissed in their entirety, on the merits, and with prejudice (hereinafter "DEEMED RELEASE"). By operation of the DEEMED RELEASE, the SETTLEMENT CLASS MEMBERS, separately and severally, fully, finally, and forever release the DEFENDANT and ADDITIONAL RELEASEE(S), separately and severally, of and from all CLAIMS, which each SETTLEMENT CLASS MEMBER ever had, now has or which each SETTLEMENT CLASS MEMBER hereafter can, shall or may have. By operation of the DEEMED RELEASE, each SETTLEMENT CLASS MEMBER releases all CLAIMS against the ADDITIONAL RELEASEE(S), in each and every capacity that such claim may be asserted against the ADDITIONAL RELEASEE(S), including, without limitation, their corporate relationship with DEFENDANT, as the supplier of any material used in GALECRON®, as a participant, directly or indirectly, in any act complained of, or any basis for the assertion of vicarious liability. CIBA-GEIGY CORPORATION's obligations pursuant to this STIPULATION shall constitute consideration for the above releases and SETTLEMENT CLASS MEMBERS shall be limited, on and after the APPROVAL DATE, to the relief set forth in this STIPULATION (and the enforcement of this STIPULATION solely as against CIBA-GEIGY CORPORATION and/or its insurers) as their sole recourse on account of any and all CLAIMS.

Appendix E

B. *Giving of Releases.*

All SETTLEMENT CLASS MEMBERS who do not timely opt-out shall be deemed to provide each of the DEFENDANT and ADDITIONAL RELEASEE(S) with a DEEMED RELEASE.

C. *Effect of Releases.* The above shall in no way release any claims other than the CLAIMS defined in paragraph I.G.

D. *Dismissal of Actions.* In addition to the dismissal of RELATED CASE, as set forth in Part II above, on the APPROVAL DATE, CLASS COUNSEL shall cooperate with DEFENDANT and ADDITIONAL RELEASEE(S) to stay or dismiss, as appropriate, any other action of any SETTLEMENT CLASS MEMBER pending or later commenced in any state or federal court or other forum.

* * * *

APPENDIX F — LEFT BLANK INTENTIONALLY

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Appendix F

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APPENDIX G — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION DATED AND FILED NOVEMBER 24, 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CIVIL ACTION NO. 98-1150-CB-S

HURLEY HENSON, *et al.*,

Plaintiffs,

v.

CIBA-GEIGY CORPORATION, *et al.*,

Defendant.

ORDER

Pursuant to the Order entered this in *Price, et al. v. Ciba-Geigy*, 94-00647-CB-S (S.D. Ala.) it is hereby **ORDERED, ADJUDGED, and DECREED** that all claims by Plaintiffs, the "Henson Group" be and hereby are **DISMISSED WITH PREJUDICE**. Pursuant to the Order entered in *Price*, all costs incurred by Defendants here are to be taxed to Hany A. Zohdy, counsel for Plaintiffs, the "Henson Group".

DONE this the 24th day of November, 1998.

s/ Charles R. Butler, Jr.
CHIEF DISTRICT JUDGE

APPENDIX H — STIPULATION OF SETTLEMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA DATED AND FILED JANUARY 30, 1995

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CASE NO. 94-0647-CB-S

RUSSELL PRICE, et al., on behalf of themselves and others similarly situated,

Plaintiffs,

vs.

CIBA-GEIGY CORPORATION, a corporation,

Defendant.

STIPULATION BETWEEN CLASS COUNSEL, THE CARPENTER AND HENSON GROUPS, HERETOFORE THE CARPENTER AND HENSON OBJECTORS, AND DEFENDANT, CIBA-GEIGY CORPORATION, AMENDING STIPULATION OF SETTLEMENT

Appendix H

It is hereby stipulated that the Henson and Carpenter Groups[1] do hereby withdraw all of their objections to the Stipulation of Settlement heretofore entered into and it is further stipulated that the following enhancements will be incorporated into the Stipulation of Settlement dated August 26, 1994 ("STIPULATION"):

The above-referred to enhancements are as follows:

1. Section I(Y) of the STIPULATION is amended to add the following: "MEDICAL EVIDENCE shall include completed human epidemiology studies sponsored by CIBA-GEIGY CORPORATION, even if unpublished;"

2. Section VI(E)(4) of the STIPULATION is amended to provide as follows: "The determination of the EPIDEMIOLOGY PANEL pursuant to Section VI(E) may be appealed to the Court pursuant to Rule 53(e) of the Federal Rules of Civil Procedure. The EPIDEMIOLOGY PANEL shall be deemed a Special Master to the Court solely for the purpose of permitting an appeal pursuant to Rule 53(e) of the Federal Rules of Civil Procedure."

3. Section VI(B) of the STIPULATION is amended to provide a Section "4" as follows:

---

1. The Henson Group consists of the individuals denominated "Applicants" on page one of the Motion to Permit Intervention and Notice of Intent to Appear, filed on behalf of Hurley Henson, et al, on or about December 16, 1994.

The Carpenter Group consists of the individuals denominated "Carpenter Objectors" on the Notice of Appearance filed on behalf of James Carpenter, et al on or about December 16, 1994.

Appendix H

"4. *Metastasis Or Organ Removal Incident To Certain Carcinomas Of The Urinary Collection System.*

The Metastasis or Organ Removal Incident to Certain Carcinomas of the Urinary Collecting System condition shall have the following requirements:

a. All of the requirements for the Certain Carcinomas of the Urinary Collecting System condition set forth in Part B.2.a. and b. above; and

b. A diagnosis by a BOARD-CERTIFIED PATHOLOGIST, ONCOLOGIST OR UROLOGIST that the EXPOSED PERSON'S primary carcinoma of the urinary collecting system (as defined in Part B.2. above) has either (1) resulted in treatment requiring removal of an organ outside the urinary collecting system, or (2) metastasized beyond the urinary collecting system.

The Metastasis or Organ Removal Incident to Certain Carcinomas of the Urinary Collecting System condition shall not include any carcinomas within the urinary collecting system. The Metastasis or Organ Removal Incident to Certain Carcinomas of the Urinary

Collecting System shall not include any carcinomas outside the urinary collecting system unless such carcinomas result from a metastasis of the EXPOSED PERSON'S primary carcinoma of the urinary collecting system."

4. Exhibit A to the STIPULATION is amended to add a new Section "G" as follows:

"G. An EXPOSED PERSON who submits a QUALIFIED CLAIM for compensation for the Metastasis or Organ Removal Incident to Certain Carcinomas of the Urinary Collection System condition shall receive from the DCA FUND 25% of the amount set forth in Paragraph B of this Exhibit C (with age to be determined at the time of the relevant diagnosis or surgery); provided, however, that there shall be a 12.5% reduction if the EXPOSED PERSON does not qualify as a NON-SMOKER, a 25% reduction if the EXPOSED PERSON does not qualify as a SCREENING PARTICIPANT, and a 37.5% reduction if the EXPOSED PERSON does not qualify as either a NON-SMOKER or a SCREENING PARTICIPANT. An EXPOSED PERSON may obtain only one payment under this Part G regardless of the number of occurrences. However, an EXPOSED PERSON may receive compensation under this Part G in addition to compensation (if they so qualify) under Parts A, B, C and D."

5. Section D of Exhibit A of the STIPULATION relating to compensation for hemorrhagic cystitis is amended to strike all references to the number "$1,000" and substitute the number "$2,000."

6. Section VII of the STIPULATION relating to Timeliness of Claims is amended to strike all references to "365 days" and to substitute "two years."

7. Section I(D) of the STIPULATION is amended to add the following: "The ADMINISTRATOR shall have no prior or existing affiliation with CIBA-GEIGY CORPORATION; provided, however, the Court may waive this requirement for good cause shown.

8. Section I(G) of the STIPULATION is amended to add the phrase: "provided, however, that CLAIMS of spouses, parents, children and other relatives do not include claims by such persons of alleged direct exposure to GALECRON®, unless such person is an EXPOSED PERSON as defined in the STIPULATION."

9. Section VI(A)(5) of the STIPULATION is amended to add to the definition of MEDICAL EXAMINER: "or his assistant, who is a licensed medical doctor."

10. The Court shall determine, under Section V(A) of the STIPULATION, the standard of proof that will be applied by the Administrator in determining what constitutes "sufficient evidence of occupationally related exposure."

11. Section 2 of Exhibit C of the STIPULATION shall be amended to add the following:

"In addition to the PROCEDURES set forth herein, an EXPOSED PERSON shall be entitled to two additional urologist office visits, or visits with a licensed medical doctor recommended by the urologist, in the first year of the EXPOSED PERSON'S participation in the MEDICAL MONITORING PROGRAM, for the purpose of permitting the EXPOSED PERSON to seek medical counselling or advice concerning the MEDICAL MONITORING PROGRAM and/or medical issues arising out of exposure to GALECRON®."

12. Section I(AQ) of the STIPULATION relating to the TOTAL OBLIGATION is amended to strike "forty-five million dollars ($45,000,000.00)" and to substitute "fifty million dollars ($50,000,000.00)".

13. Section I(G) of the STIPULATION is amended to add to the definition of CLAIM, as amended by Paragraph 8 above, the following language:

> . . . ; provided, further, that this definition of CLAIM is subject to and limited by the provision set forth in Part XXII of this STIPULATION.

14. Section XI(A) of the STIPULATION is amended to add the following language to the end of this Section:

> . . . ; provided, however, that this bar does not apply to claims for contribution, indemnity or reimbursement that may be asserted by any

> Third Party as a result of payment of disability or death benefits to any SETTLEMENT CLASS MEMBER by such Third Party pursuant to any applicable workers' compensation or similar statutory provision for compensation by an employee against an employer. CIBA-GEIGY CORPORATION reserves its right to assert any and all defenses with respect to the merits of any Third Party contribution, indemnity or reimbursement claim arising from the payment by such Third Party of disability or death benefits, as referenced in this Paragraph.

15. The following language will be jointly proposed by the parties to this Stipulation for inclusion in the Court's Final Judgment:

> Pursuant to Federal Rule of Civil Procedure 23(e), this Court's final approval of this STIPULATION OF SETTLEMENT is a result of this Court's independent finding, after a full presentation of the evidence, that the STIPULATION OF SETTLEMENT is non-collusive, fair, reasonable and adequate, with such finding constituting a judgment, as opposed to a compromise or settlement, as contemplated by Louisiana's Workers' Compensation Act, LSA-R.S. 23:1021, *et seq.*, or any other state's workers' compensation statutory provisions.

This Court further finds that the STIPULATION OF SETTLEMENT does not release the claim of any SETTLEMENT CLASS MEMBER arising under workers'

compensation or similarly statutory provisions for compensation by an employee against an employer.

This Court further finds that the STIPULATION OF SETTLEMENT specifically reserves to Third Parties any claims for contribution, indemnity or reimbursement against CIBA-GEIGY CORPORATION for disability or death benefits paid by any Third Party to any SETTLEMENT CLASS MEMBER pursuant to workers' compensation or similar statutory provisions for compensation by an employee against an employer, and that SETTLEMENT CLASS MEMBERS are not obligated pursuant to this STIPULATION OF SETTLEMENT to indemnify DEFENDANT or ADDITIONAL RELEASEE(S) in the event that such Third Party claims for disability or death benefits paid by any Third Party to any SETTLEMENT CLASS MEMBER is asserted against CIBA-GEIGY CORPORATION or ADDITIONAL RELEASEE(S).

Based on the foregoing findings, this Court concludes that as a matter of both law and public policy, the rights of employers and/or the workers' compensation carriers of employers of SETTLEMENT CLASS MEMBERS have not been and will not be prejudiced in any way as a result of this Court's approval of this STIPULATION OF SETTLEMENT, and these employers and/or workers' compensation carriers of employers of SETTLEMENT CLASS MEMBERS cannot thereby assert this STIPULATION OF SETTLEMENT in any other action or proceeding as a bar to any SETTLEMENT CLASS MEMBER'S claim against that employer and/or workers' compensation carrier of that employer, pursuant to any applicable workers' compensation or similar statutory provision for compensation by an employee against an employer.

16. Defendant, CIBA GEIGY CORPORATION, agrees to follow its normal record retention policy with regard to all documents relating to Galecron.

17. If the STIPULATION is approved by the Court, the parties to this Stipulation will jointly move the Court for an order: (a) permitting class counsel to notify settlement class members who timely excluded themselves from the class action ("opt outs") of the enhancements to the STIPULATION, and of the Court's approval of the STIPULATION; and (b) providing that opt outs may become members of the settlement class by so advising the Court in writing within 60 days after issuance of such notice. A post card addressed to the Clerk of Court shall be included in the notice for such purpose.

18. Paragraphs 1-10 have been negotiated with the Henson Group; Paragraph 11 has been negotiated with Class Counsel; and Paragraphs 12 and 17 have been negotiated with the Henson Group, Carpenter Group and Class Counsel; and Paragraphs 13-16 have been negotiated with the Carpenter Group.

It is further stipulated that Class Counsel and Counsel for CIBA GEIGY CORPORATION hereby withdraw any objection to the intervention of the Henson and Carpenter Groups, providing that the intervention is solely limited to the purpose of assuring the implementation of these enhancements under the STIPULATION, including the right to petition for attorney's fees to the extent these intervening counsel have created additional monetary benefits to the Class by these enhancements.

APPENDIX I — NOTICE OR REMOVAL IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA DATED OCTOBER 13, 1998

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION

NO. 98-866-B-3

DIVISION

HURLEY HENSON, PHILIP HANO, JOE BOWMAY, RANDALL SEVARIO, SR., BETTY HANO, DAVID GRAY, RANDALL SEVARIO, JR.

versus

CIBA-GEIGY CORPORATION, ROBERT BABB, EDEE TEMPLET, KENNETH A. DeVUN

FILED: _____ _____
DEPUTY CLERK

NOTICE OF REMOVAL

NOW INTO COURT, through undersigned counsel, come defendants, Ciba-Geigy Corporation (Ciba-Geigy), Robert Babb, Edee Templet and Kenneth A. DeVun, who respectfully file this Notice of Removal with this Court for the following reasons:

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I.

Plaintiffs originally filed this class action against defendants on September 15, 1993 in the 18th Judicial District Court for the Parish of Iberville, State of Louisiana, seeking damages for injuries allegedly sustained as a result of Hurley Henson's, Philip Hano's, Joe Bowman's, Randall Sevario, Sr.'s, Betty Hano's, David Gray's, Randall Sevario, Jr.'s and all other individuals' exposure to "toxic, noxious, and carcinogenic chemicals including, but not limited to chlordimeform and atrazine" at the Ciba-Geigy, St. Gabriel, Iberville Parish, Louisiana facility. (Exhibit "A," Paragraph 4).

II.

Subsequently, plaintiffs became members of a class action lawsuit, entitled *Russell Price, et al. on behalf of themselves and Others Similarly Situated v. Ciba-Geigy Corporation, a Corporation*, and bearing Civil Action No. 94-0647-B-5, on the docket of the United States District Court for the Southern District of Alabama, Southern Division (hereinafter "Prior Class Action") which sought damages for Galecron and Chlordimeform exposure.

III.

The Price Class Action was settled as to all plaintiffs and defendants herein by virtue of a Stipulation of Settlement and two Orders issued by the United States District Court for the Southern District of Alabama, Southern Division, on March 31, 1995 and April 3, 1995, approving the Stipulation of Settlement. (Exhibits "B," "C" and "D").

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IV.

As a part of the ordered settlement, plaintiffs were required to dismiss all of their claims in this case, *Hurley Henson, et al v. Ciba-Geigy Corporation, et al*, Docket No. 43, 620, 18th Judicial District Court, Parish of Iberville, State of Louisiana. (Exhibit "B" pp. 15 and 18).

V.

Instead of dismissing their claims, and in direct disobedience of the Orders of the United States District Court for the Southern District of Alabama, Southern Division, plaintiffs filed an Amendment to Plaintiffs' Original Class Action Petition, which was first received by defendants on September 14, 1998. In the petition, plaintiffs claimed damages for alleged exposure to Chlordimeform and other chemicals. (See page 2 of Exhibit "E").

VI.

Pursuant to 28 U.S.C. §1441(a), the United States District Court for the Middle District of Louisiana is a district and division within which the above-described state court suit is pending.

VII.

This Court has original jurisdiction over this action under **28 U.S.C. §1651,** and the action is one which may be removed to this Court by defendants pursuant to the provisions of **28 U.S.C. §1441, *et. seq.*,** because the plaintiffs' amended petition is an action to recover damages on claims which

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have been settled, released or required to be dismissed by Court Order. Plaintiffs' alleged exposure arises out of the claims that were previously settled as to all defendants herein, and on which Judgments were entered by the United States District Judge Charles R. Butler, Jr., Chief District Judge, in the Price Class Action.

VIII.

28 U.S.C. §1651, which protects a federal court's continuing jurisdiction over its orders, permits the removal of state court actions in situations where necessary to protect such jurisdiction. In the Price Class Action, Judge Butler expressly declared that the United States District Court for the Southern District of Alabama, Southern Division, retained jurisdiction with respect to future performance of, and any claims related to the performance of, the Settlement Agreements and Judgments. (See Exhibits "B," "C" and "D").

IX.

The Stipulation of Settlement and the Orders issued by Judge Butler in the Price Class Action specifically required plaintiffs to dismiss the *Henson* suit, which they did not do. (See p. 18, Paragraph 4 of Exhibit "B").

X.

The claims and issues set forth in plaintiffs' amended petition are legally barred by the terms of the Price Class Action settlement. Any Judgment entered by any other court will necessarily modify, interpret, or otherwise affect the mandates of the Settlement Agreements and Judgments in

Appendix I

the Price Class Action. The claims set forth in plaintiffs' Amendment to Plaintiffs' Original Class Action Petition constitute a collateral challenge to the adequacy of the settlements and Judgments and is a direct threat to the continued implementation of these settlements and Judgments. Therefore, the exercise of jurisdiction by this Court pursuant to **28 U.S.C. § 1651** is necessary and proper (1) to protect the integrity of the Settlement Agreements and Judgments; (2) to prevent the relitigation of matters already decided; (3) to prevent the possibility of inconsistent or conflicting rulings; (4) to preserve the defendants' ability to comply with the Settlement Agreements and Judgments; and (5) to protect the Court's continued jurisdiction to oversee and monitor the Settlement Agreements and Judgments in the Price Class Action.

XI.

Furthermore, the Order approving the Stipulation of Settlement in the Price Class Action "enjoined" the institution or maintaining of any claim against Ciba-Geigy, as well as their employees, in any state or federal court or other forum. Therefore, the amended petition filed by plaintiffs is in contempt of the Order issued by the United States District Court for the Southern District of Alabama, Southern Division, specifically enjoining such actions. (See "Exclusive Remedy" section of Stipulation of Settlement for the Price Class Action, Exhibit "B" p.19).

XII.

As a result of the foregoing, this Court has residual jurisdiction or authority pursuant to **28 U.S.C. §1651.**

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XIII.

This Court also has jurisdiction over this action under the provisions of **28 U.S.C. §1367** because the claims in this action are so related to claims in the Price Class Action "that they form part of the same case or controversy under Article III of the United States Constitution."

XIV.

This Notice of Removal is being filed less than thirty (30) days after the defendants' receipt of the Amendment to Plaintiffs' Original Class Action Petition on September 14, 1998. Accordingly, the removal is timely under **28 U.S.C. §1446 (B).** (Exhibit "B").

XV.

A copy of Plaintiffs' Original Class Action Petition, Amendment to Plaintiffs' Original Class Action Petition and all papers filed in the pending state court are attached hereto as Exhibit "F".

XVI.

Defendants have simultaneously filed with this Notice of Removal a Motion to Transfer this matter to the United States District Court for the Southern District of Alabama, Southern Division.

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XVII.

Upon filing this Notice of Removal, defendants have given written notice to all other parties by furnishing copies of this Notice of Removal, and will file forthwith written notice of this Notice of Removal in the 18th Judicial District Court for the Parish of Iberville, State of Louisiana.

WHEREFORE, defendants, Ciba-Geigy Corporation ("Ciba-Geigy"), Robert Babb, Edee Templet and Kenneth A. DeVun, pray that the above state court action be removed from the 18th Judicial District Court for the Parish o Iberville, State of Louisiana, to this Honorable Court.

Respectfully submitted,

ADAMS AND REESE

By: s/ Henry B. Alsobrook, Jr.
HENRY B. ALSOBROOK, JR. (#2431)
MARK C. SURPRENANT (#12582)
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Counsel for Defendants, Ciba-Geigy Corporation, Robert Babb, Edee Templet, and Kenneth A. DeVun

APPENDIX J — MOTION TO TRANSFER IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA DATED OCTOBER 13, 1998

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION

NO. 98-866-B-3

DIVISION

HURLEY HENSON, PHILIP HANO, JOE BOWMAN, RANDALL SEVARIO, SR., BETTY HANO, DAVID GRAY, RANDALL SEVARIO, JR.

versus

CIBA-GEIGY CORPORATION, ROBERT BABB, EDEE TEMPLET, KENNETH A. DeVUN

FILED: _____ _____
DEPUTY CLERK

MOTION TO TRANSFER

NOW INTO COURT, through undersigned counsel, come defendants, Ciba-Geigy Corporation ("Ciba-Geigy"), Robert Babb, Edee Templet and Kenneth A. DeVun, who move the Court to transfer the above entitled cause of action to the United States District Court for the Southern District of Alabama, Southern Division, on the grounds that the Honorable Charles R. Butler, Jr., Chief District Judge of the

Appendix J

United States District Court for the Southern District of Alabama, Southern Division, ordered this case to be dismissed as part of the Stipulation of Settlement in the class action lawsuit, entitled *Russell Price, et al. on behalf of themselves and Others Similarly Situated v. Ciba-Geigy Corporation, a Corporation*, bearing Civil Action No. 94-0647 B-5, on the docket of the United States District Court for the Southern District of Alabama, Southern Division, ("Price Class Action"). Further, Judge Butler specifically maintained jurisdiction over the plaintiffs and the cause of action that they bring herein, pursuant to an Order signed by Judge Butler on the 31st day of March, 1995, and a Judgment signed by him on April 3, 1995, copies of which are attached to the Memorandum in Support of this Motion. Contemporaneously filed with this Motion to Transfer, defendants have filed a Notice of Removal based on 28 U.S.C. §1651, 28 U.S.C. §1441, *et. seq.*, and 28 U.S.C. §1367.

Respectfully submitted,

ADAMS AND REESE

By: s/ Henry B. Alsobrook, Jr.
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Counsel for Defendants, Ciba-Geigy Corporation, Robert Babb, Edee Templet, and Kenneth A. DeVun

APPENDIX K — MEMORANDUM IN SUPPORT OF MOTION TO TRANSFER IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA DATED OCTOBER 13, 1998

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION

NO.

DIVISION

HURLEY HENSON, PHILIP HANO, JOE BOWMAY, RANDALL SEVARIO, SR., BETTY HANO, DAVID GRAY, RANDALL SEVARIO, JR.

versus

CIBA-GEIGY CORPORATION, ROBERT BABB, EDEE TEMPLET, KENNETH A. DeVUN

FILED: _____ _____
DEPUTY CLERK

MEMORANDUM IN SUPPORT OF MOTION TO TRANSFER

MAY IT PLEASE THE COURT,

Plaintiffs originally filed this class action lawsuit against defendants, Ciba-Geigy Corporation ("Ciba Geigy"), Robert Babb, Edee Templet, and Kenneth A. DeVun,

on September 15, 1993 in the 18th Judicial District Court for the Parish of Iberville, State of Louisiana, seeking damages for injuries allegedly sustained as a result of exposure to "various toxic and carcinogenic chemicals, including, but not limited to chlordimeform and atrazine" at the Ciba-Geigy, St. Gabriel, Iberville Parish, Louisiana facility by Hurley Henson, Philip Hano, Joe Bowmay, Randall Sevario, Sr., Betty Hano, David Gray, Randall Sevario, Jr. and other individuals. (Exhibit "A," p. 2, ¶ 4).

Subsequently, plaintiffs became members of a class action lawsuit, entitled *Russell Price, et al. on behalf of themselves and Others Similarly Situated v. Ciba-Geigy Corporation, a Corporation*, bearing Civil Action No. 94-0647 B-5, on the docket of the United States District Court for the Southern District of Alabama, Southern Division, ("Price Class Action") which sought damages for exposure to Galecron and Chlordimeform. Chlordimeform is the name of a chemical that is the active ingredient in the product whose trade name is Galecron®, which was manufactured by Ciba-Geigy.

On March 31, 1995, the Honorable Charles R. Butler, Jr., Chief District Judge of the United States District Court for the Southern District of Alabama, Southern Division, entered an Order certifying a settlement pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) of a Settlement Class including the plaintiffs herein. This Order was reiterated in a Judgment dated April 3, 1995. (Exhibits "B" and "C").

As a part of the ordered Settlement, plaintiffs were required to dismiss all of their claims in the present case. The Stipulation of Settlement refers to the instant suit, *Hurley Henson, et al v.*

Ciba-Geigy Corporation, et al, Docket No. 43, 620, 18th Judicial District Court, Parish of Iberville, State of Louisiana, as the RELATED CASE (Exhibit "D," pp. 15 and 16). In regards to this case, the Stipulation of Settlement specifically states that this suit was to be dismissed, with prejudice, as of the approval date of the settlement:

> CLASS COUNSEL hereby stipulates that the RELATED CASE, including any and all claims (including without limitation any CLAIMS defined herein) against CIBA GEIGY CORPORATION and individual defendants, Edee Templet, Kenneth A. DeVun and Robert Babb, shall be dismissed, with prejudice, as of the APPROVAL DATE, and that such RELATED CASE shall be stayed until the APPROVAL DATE. Further, as of the APPROVAL DATE, CLASS COUNSEL also agrees that such individual defendants shall have no obligations or liability whatsoever under this STIPULATION.

(Exhibit "D," p. 18)[1].

In the Judgment certifying the Settlement Class and approving the class settlement, Judge Butler made the Stipulation of Settlement an appendix to his Order of March 31, 1995, and found it to be fair, adequate and reasonable under Federal Rules of Civil Procedure 23(a). (Exhibit "B"). Judge Butler specifically retained jurisdiction "with respect

1. This exhibit is a composite which includes Court ordered enhancements to the original Stipulation of Settlement.

to future performance of, and any claims related to performance of, the Settlement agreement and judgment." (Exhibits "B" and "C").

Rather than dismissing their claims, and in direct disobedience of the order of the United States District Court for the Southern District of Alabama, Southern Division, plaintiffs filed an Amendment to Plaintiffs' Original Class Action Petition, which was first received by defendants on September 14, 1998. In the petition, plaintiffs claimed damages for alleged exposure to Chlordimeform and other chemicals. (See Exhibit "E," p. 2). Plaintiffs' amended petition is an action to recover damages on claims which have been settled, released or required to be dismissed by Court Order. Plaintiffs' alleged exposure arises out of the claims that were previously settled as to all defendants herein, and on which Judgments were entered by Judge Butler in the Price Class Action.

Contemporaneously filed with this Motion to Transfer, defendants have filed a Notice of Removal to this Honorable Court based on 28 U.S.C. §1651, 28 U.S.C. §1441, *et. seq.*, and 28 U.S.C. §1367.

LAW AND ARGUMENT

28 U.S.C. §1651, the All Writs Act, provides that district courts "may issue all writs necessary or appropriate in the aid of their respective jurisdictions." Under the All Writs Act, a federal court may permit removal of state court proceedings to effectuate or prevent the frustration of existing orders of the federal court. *United States v. New York*

Tel. Co., 434 U.S. 159 (1977); *In re Agent Orange Prod. Liability Litigation*, 996 F.2d 1425, 1431 (2nd Cir. 1993). This includes a class action settlement previously reached in federal court. *See Agent Orange*, 966 F.2d at 1431; *Sable v. General Motors Corp.*, 90 F.3d 171, 175 (6th Cir. 1996); *In re VMS Sec. Litig.*, 103 F.3d 1317, 1323-1326 (7th Cir. 1996). Additionally, in the context of class action litigation, a federal district court may use the All Writs Act to remove or enjoin prosecution of subsequent state court claims to enforce its ongoing orders against relitigation and to guard the integrity of its prior rulings over which it expressly retained jurisdiction. *Wesch v. Folsom*, 6 F.3d 1465 (11th Cir. 1993), *cert. denied*, 510 U.S. 1046 (1994); *Battle v. Liberty Nat. Life Ins. Co.*, 877 F.2d 877 (11th Cir. 1989); *In re VMS Sec. Litig.*, 103 F.3d 1317, 1323-1326 (7th Cir. 1996).

Pursuant to the All Writs Act as well as the inherent power of the Court to transfer cases in the interest of justice under 28 U.S.C. 1404, defendants submit that this case should be transferred to United States District Court for the Southern District of Alabama, Southern Division, to be consolidated with Case No. 94-0647-CB-S, entitled "*Russell Price, et al v. Ciba-Geigy Corporation.*"[2] This transfer is appropriate in order to effectuate and prevent the frustration of the Orders and Judgment the Alabama court previously issued in its exercise of jurisdiction in the Price Class Action. *See In Re*

2. For cases which have been transferred pursuant to the All Writs Act *see Hunt v. Bankers Trust Co.*, 799 F.2d 1060 (5th Cir. 1986); *In Re Agent Orange Product Liability Litigation*, 996 F.2d 1425, 1431 (2nd Cir. 1993), *cert. denied*, 114 S. Ct. 1126, 127 L.Ed.2d 434 (1994). *See also*, Order Transferring Case in the matter of *Puebla v. Pfizer*, No. SACV 94-671 GLT (Eex), Central District of California, attached hereto as Exhibit "F."

Agent Orange Product Liability Litigation, 996 F.2d 1425, 1431 (2nd Cir. 1993), *cert. denied*, 114 S. Ct. 1126, 127 L.Ed.2d 434 (1994).

Since the United States District Court for the Southern District of Alabama, Southern Division, has retained jurisdiction over the Price Class Action it has authority to ensure that the Stipulation of Settlement it previously approved is enforced according to its terms. A federal court retains the power to enforce and to consider challenges to settlements entered into in cases originally filed with the court. *Ryan v. Dow Chemical Co.*, 781 F. Supp. 902 (E.D.N.Y. 1991). Thus, the United States District Court for the Southern District of Alabama, Southern Division, has the power and the obligation to protect and effectuate its orders and final judgments in the Price Class Action and ensuring that those orders and judgments are not being flouted. The Stipulation of Settlement and the Orders issued by Judge Butler specifically required plaintiffs to dismiss the Henson suit, which they did not do. (See Exhibit "D," p. 18, Paragraph 4). Thus, the Southern District of Alabama, Southern Division, is the court best situated to handle this case.

CONCLUSION

Because the United States District Court for the Southern District of Alabama, Southern Division, has specifically order this case to be dismissed and entered a Judgment retaining jurisdiction over the plaintiffs herein, this Honorable Court should transfer this case to the United States District Court for the Southern District of Alabama, Southern Division, to be consolidated with Case No. 94-0647-CB-S, entitled "*Russell Price, et al v. Ciba-Geigy Corporation.*"

Respectfully submitted,

ADAMS AND REESE

By: s/ Henry B. Alsobrook, Jr.
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APPENDIX L — TRANSCRIPT OF THE 18TH JUDICIAL DISTRICT FOR PARISH OF IBERVILLE, STATE OF LOUISIANA DATED AUGUST 18, 1998

18TH JUDICIAL DISTRICT
PARISH OF IBERVILLE
STATE OF LOUISIANA

NO. 43,620

HURLEY HENSON, ET AL

VERSUS

CIBA-GEIGY CORPORATION

TRANSCRIPT OF THE ABOVE-ENTITLED PROCEEDING CAME ON FOR HEARING IN OPEN COURT AT THE PARISH COURTHOUSE LOCATEDIN PLAQUEMINE, IBERVILLE PARISH, LOUISIANA, ON THE 18TH DAY OF AUGUST, 1998.

THE HONORABLE JACK T. MARIONNEAUX, JUDGE, PRESIDING.

* * *

[2] OFFICIAL PROCEEDINGS OF AUGUST 18, 1998:

(Bailiff Calls Court to Order)

THE COURT:

What's the story on this?

Appendix L

MR. PENDLEY:

Judge, this is a rule to show cause in *Hurley Henson, et al vs. Ciba Geigy Corporation*, No. 43,620. And I'm the mover as class counsel in the *Russell Price, et al vs. Ciba Geigy*. It's on the docket United States District Court for the Southern District of Alabama. And I will let Mr. Zohdy introduce himself.

MR. ZOHDY:

Your Honor, my name is Hany Zohdy, I represent Hurley Henson. This matter came on by mutual cause by class counsel on the *Price vs. Ciba Geigy* who is also plaintiff counsel in the matter entitled *Hurley Henson vs. Ciba Geigy* within Your Honor's jurisdiction in this Court.

MR. PENDLEY:

Your Honor, this is a rule to show cause why this matter should not be dismissed. And very briefly the procedural history of this litigation is thus: This lawsuit was filed in 1993 as a class action by Mr. Henson and others against Ciba Geigy for exposure to a chemical called Galecron, which is a trade name. The actual chemical is Chlordimeform.

This litigation progressed for some period of time and in the settlement, a national settlement was reached with Ciba Geigy. The national [3] settlement was confected and approved in litigation that was filed after that in the United States District Court for the Southern District of Alabama called *Price vs. Ciba Geigy*. And the settlement, which I have

here and which I can look in — I have my actual copy of the settlement which is an original was filed in the *Price* matter in August of 1994. And at this time, Your Honor, we would offer, introduce and file in evidence the huh, this original with leave of Court to substitute a copy huh, with leave to substitute because this is the only original copy that I have. I will represent to the Court that the stipulation of settlement was executed in multiple originals, and of course, as class counsel I have one of them.

Now the *Price* settlement provided for a medical monitoring program for the class members who did not opt out as well as cash payments for the class members upon the manifestation of certain physical symptoms resulting from the class members' exposure to Chlordimeform. And I'm not going to get into all of the various permutations of the benefits, but it involved whether or not they smoked. And the only thing that a class member had to be able to establish is 1) that he was exposed to Chlordimeform; and 2) that he had a medical condition that a medical doctor would certify that he had and that is it. He had to have exposure, a manifestation — he didn't even, to get the benefits he didn't even have to have testimony that links it. It is just presumed that [4] if he's exposed and he's got condition "A" then he gets the benefits according to the schedule.

Now, the reason we are here is that on Page 40 and 41 of the settlement agreement in *Price*, the stipulation of settlement, which was approved by the Court, it is Subchapter 10 it says releases and dismissal of actions, okay. And in Chapter 10(D), Paragraph D as in "David" in addition to dismissal of the *Price* case class counsel shall cooperate with

defendant and additional releasees to stay or dismiss when appropriate any other action of any similar class member pending or later permits a new state or federal court or other forum. All right. This case, the *Henson* case is a related action.

MR. ZOHDY:

May I say something — it's already named in there.

MR. PENDLEY:

Right. So as class counsel we have an obligation and we have been requested by Ciba to dismiss this action because the plaintiffs, the named plaintiffs in the *Henson* action are members of the class. And you know, you can't —

THE COURT:

Let me ask a question, we were here before on this case.

MR. PENDLEY:

You mean on this motion, on this rule?

THE COURT:

No, no, we were here on this case a while back, I can't remember when.

[5] MR. PENDLEY:

Yes, sir. I think, in fact, I've got the transcript —

THE COURT:

And it was something to do with the same, the same thing, the fact that there was an Alabama court having some hearings on the case —

MR. ZOHDY:

There was a motion to lift the stay.

THE COURT:

Right. You and Steve Irving —

MR. ZOHDY:

He was at that time.

THE COURT:

Okay. Now, let me ask you this, did your client opt out of the national —

MR. ZOHDY:

No, he didn't, sir. I mean, I don't know.

THE COURT:

That was a question that came up at the same time.

MR. PENDLEY:

They did not. All of these people are part of the class.

MR. ZOHDY:

Well, let me say this, Your Honor, that was not the issue at the time. At the time we were objecting —

THE COURT:

I remember there was a stay order by the —

MR. ZOHDY:

By Your Honor.

[6] THE COURT:

Correct.

MR. ZOHDY:

Okay. And then we filed a motion to lift the stay and then Your Honor denied our motion. So this case technically is a stayed case by Your Honor.

THE COURT:

At this point.

MR. ZOHDY:

So at this point there is no motion to lift that stay.

THE COURT:

All right. Let me ask you this, the fact that the national class that he didn't opt out in settled?

MR. ZOHDY:

Yes, Your Honor. We are not actually arguing against the *Price* case. We are not, we are attacking it.

THE COURT:

I understand that, but you want to continue this case even though the national class settled, am I — I'm just trying to get my bearings, is that correct?

MR. ZOHDY:

That's right. Certain Galecron claims, claims stems from exposure to Galecron we are fighting that issue at all. I mean it's named in the suit, I was one of the people who signed on the amendment for the settlement.

THE COURT:

[7] All right. So the claim as to that particular chemical —

MR. ZOHDY:

It's gone.

THE COURT:

— it's dead.

MR. ZOHDY:

With this —

THE COURT:

You have some more?

MR. ZOHDY:

Yes, Your Honor, look at the petition.

THE COURT:

You have some more chemicals?

MR. ZOHDY:

They named other chemicals in the petition. They named other claims in the petition. So it would be unfair for the people of this district just to dismiss the whole thing in lump sum.

THE COURT:

Let me ask you this, —

MR. ZOHDY:

Yes, Your Honor.

THE COURT:

— the Alabama settlement, did it include more than the Galecron?

MR. ZOHDY:

No, sir, only Galecron and Mr. Pendley can —

MR. PENDLEY:

That's right.

THE COURT:

That is it?

[8] MR. ZOHDY:

Yes, sir.

THE COURT:

So as far as this case is concerned I should only dismiss the Galecron claim –

MR. ZOHDY:

Yes, sir.

THE COURT:

— and the rest of it should remain alive?

MR. ZOHDY:

Yes, Your Honor.

THE COURT:

Mr. Pendley.

MR. PENDLEY:

Well, okay, Your Honor, in response what Mr. Zohdy says about the fact that the *Price* case encompasses only Chlordimeform/Galecron is absolutely true. That settlement is limited solely and purely to that chemical and that chemical only, and I think it is very clear from the settlement document that that is correct.

Now, and if the Court will look at the petition in this matter and particularly Paragraph 2 it talks about exposure to carcinogenic chemicals including but not limited to Chlordimeform/Galecron. I suggest to the Court that — the original petition, the original petition if Your Honor please, while it does, it talks about carcinogenic chemicals in the plural the only chemical in the original petition that is ever specifically identified is Chlordimeform or Galecron. And it is on that basis that we suggest [9] to the Court that this original petition was a Chlordimeform or Galecron case and should be dismissed.

Now Mr. Zohdy has asked me to look at the amended – I'm trying to get to it – I don't know, Judge, there may have been an amended —

MR. ZOHDY:

Your Honor, I think what happened in that case I filed some kind of an intervention —

THE COURT:

All right. Well, Judge, that is different, that is right. I have that right here.

MR. ZOHDY:

So at this time, Your Honor, Your Honor can dismiss Galecron, we have no fight with Galecron. However, we have other chemicals, we would like Your Honor to give us the opportunity probably to file a joint amendment of that petition dismissing any claim with respect to Galecron, deleting the Galecron reference, and if we have any other chemical that we're complaining of if Your Honor wants us to identify per se we can do that.

MR. PENDLEY:

Let me point this out, I'm looking at the petition for intervention and for class certification, this is the Kyle Moppert intervention by Mr. Kees. That is in here. But when the Court looks at the intervention you will see that, and starting with Paragraph 1, every paragraph talks about Chlordimeform.

Paragraph 2, exposure to chemical compound Chlordimeform. Three, carcinogenic insecticide Chlordimeform. [10] The intervention is purely and simply a Chlordimeform intervention.

MR. ZOHDY:

That's gone, Your Honor. That's already gone. They have the Moppert case, it went to the, I think it was the Eastern District of Louisiana, they filed a federal suit. That suit was joined and was consolidated with *Woodward vs. (inaudible)* and it's already settled.

THE COURT:

It is gone.

MR. PENDLEY:

That's settled too.

MR. ZOHDY:

So the only thing Your Honor —

THE COURT:

The only question I have to answer is whether or not the petition cites a cause of action for other chemicals other than —

MR. PENDLEY:

Chlordimeform.

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THE COURT:

And I'm going to say it, looking on the face of the record and reading it very plainly it says: "During their employment at Ciba Geigy's Chlordimeform facility these individuals were exposed to toxic, noxious and carcinogenic chemicals including but not limited to —". Now, I'll do this, I'll dismiss any cause of action as to the Chlordimeform or Galecron and I will give him 30 days to amend.

MR. ZOHDY:

[11] Thank you, Your Honor. Your Honor, Mr. Pendley is class counsel with this one, we're going to have to file a joint amendment unless I'm going to have to fight and I don't want to fight anyone.

MR. PENDLEY:

No. We will try to deal with that, Judge.

MR. ZOHDY:

Thank you, Your Honor.

THE COURT:

You want to put that in evidence?

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MR. PENDLEY:

Yeah, I want to put this into evidence, Your Honor, which is the stipulation mark it as Mover 1 and I'll substitute, I'll get my office to run it over.

THE COURT:

Court's adjourned.

(COURT ADJOURNED)

APPENDIX M — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION DATED AND FILED MARCH 31, 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CIVIL ACTION NO. 94-0647-B-S

RUSSELL PRICE, ET AL., on behalf of themselves and others similarly situated,

Plaintiffs,

v.

CIBA-GEIGY CORPORATION, a corporation,

Defendant.

JUDGMENT

It is hereby ORDERED, ADJUDGED and DECREED that judgment is entered in accordance with the separate order entered March 31, 1995 approving the parties' Stipulation of Settlement and establishing the Findings of Fact and Conclusions of Law. The court shall retain jurisdiction with respect to future performance of, and any claims related to performance of, the Settlement agreement and judgment.

DONE this the 3d day of April, 1995, nunc pro tunc March 31, 1995.

s/ Charles R. Butler, Jr.
CHIEF DISTRICT JUDGE

Appendix M

JUDGMENT CERTIFYING THE SETTLEMENT CLASS AND APPROVING THE CLASS SETTLEMENT

This action came on for hearing before the Honorable Charles R. Butler on January 30, 1995 in regard to settlement class action issues under Fed. R. Civ. P. 23, and now this Court determines the issues related to the fairness of the proposed Stipulation of Settlement (Appendix A), having held hearings and received evidence as to whether the class should be finally certified pursuant to Fed. R. Civ. P. 23(b)(3) and whether the Stipulation of Settlement of this class action, as amended (Appendices B and C), should be approved by the Court pursuant to Fed. R. Civ. P. 23(e), and based on the attached memorandum opinion including findings of fact and conclusions of law, this Court concludes that: (1) the Court has subject matter jurisdiction over this class action, (2) the prerequisites for final class certification of the class as defined in the findings of fact are satisfied, (3) the terms of the Stipulation of Settlement as amended, are fair to the class as a whole pursuant to Fed. R. Civ. P. 23(e), (4) Class Counsel were qualified to represent the class and acted without conflict of interest, without collusion, and appropriately in negotiating the Stipulation of Settlement, and (5) the notice materials, the plan for and the actual dissemination of the notice satisfied the requirements of Fed. R. Civ. P. 23(c)(2) and (e) and the Due Process Clause of the United States Constitution.

IT IS HEREBY ORDERED AND ADJUDGED:

1. The requirements for certification of a settlement class having been satisfied, a settlement class is certified pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3). Those to whom the

notice provided in Fed. R. Civ. P. 23(c)(2) was directed and whom the Court finds to be members of the class are:

A. All persons who fall into one of the following categories, and who reside in the United States as of the date of filing of the Class Action Complaint, who have been exposed in the United States to Galecron® ("Exposed Persons"):

(1) *Plant Workers:* An individual (whether or not employed by Ciba-Geigy Corporation) who in the course of his or her employment at Ciba-Geigy Corporation's St. Gabriel, Louisiana or McIntosh, Alabama sites, was exposed to Galecron®, including, without limitation, individuals who worked in manufacturing, formulating or packaging Galecron® or in the waste disposal of Galecron®, or worked in the construction, demolition or maintenance of any facilities used for the foregoing activities at such St. Gabriel, Louisiana or McIntosh, Alabama sites; or

(2) *Formulators:* An individual (whether or not employed by Ciba-Geigy Corporation) who in the course of his or her employment was exposed to Galecron® while at a plant or site which was involved in mixing, blending, packaging, handling or otherwise formulating pesticides which contained, in whole or in part, Galecron®; or

(3) *Applicators:* An individual (whether or not employed by Ciba-Geigy Corporation) who in the course of his or her employment, was exposed to Galecron® while involved in the application of pesticides which contained, in whole or in part, Galecron®, including, without limitation, aerial and land applicators, flagmen, mixers, blenders, loaders and other individuals who handled such pesticide prior to or during the application process; and

(4) *Other Covered Workers:* An individual (whether or not employed by Ciba-Geigy Corporation) who in the course of his or her employment was exposed to Galecron® at the Clean Land, Air, Water Corporation or Environmental Purification Advancement, Inc. disposal sites located near Bayou Sorrel, Louisiana; at Empak, Inc. in Deer Park, Texas; or in a testing or research laboratory, whether or not owned by Ciba-Geigy Corporation. Appendix A at 10 (¶ I(S)) and 16 (¶ I(AM)).

B. The spouses, parents, children or other relatives of the Exposed Persons described above. Appendix A at 16 (¶ I(AM)).

C. The class does not include those persons listed in Appendix E attached hereto who timely requested exclusion from the class by December 16, 1994; provided, however, that such persons may become members of the class by filing with the Clerk of the Court a request to opt in within 60 days of receiving notice of the opportunity to rejoin the

class. The Settlement parties are hereby directed to submit to this Court for approval a form of notice to be provided to opt outs for such a purpose.

2. Notice satisfying Fed. R. Civ. P. 23(c)(2) and 23(e) has been provided and directed to the aforesaid class members as set forth in the affidavits of L. Thomas Styron, Wayne L. Pines, and Deana R. Jaeger, submitted at the hearing and incorporated by reference herein.

3. The class action Settlement in this case, appended hereto as Appendix A, amended by Appendices B, C and D, and incorporated by reference herein, is fair, adequate and reasonable under Fed. R. Civ. P. 23(a) and all objections to the Settlement are hereby overruled.

4. Under the terms of the Stipulation of Settlement, there are various instances of possible involvement by Class Counsel in the ongoing administration of the Settlement following final approval. During the first four years following final approval of the Settlement, present Class Counsel will perform such duties necessitated by their role as Class Counsel and by the terms of the Stipulation Settlement reasonable expenses of Class Counsel associated with their continuing work may be submitted to the DCA fund for payment. After that time, Class Counsel may properly petition the Court for substitution of counsel or may, at their discretion, continue to perform such duties as are necessary, billing the DCA fund at their current hourly rate for services rendered on behalf of the class.

5. Class Counsel, Timothy E. Eble, Charles W. Patrick, Jr., S.C. Middlebrooks, III, Patrick W. Pendley, and Jerry McKernan, are hereby authorized to communicate with class members for the purpose of fulfilling the goals of the medical monitoring program and to inform them of the terms of the Settlement. Further, Class Counsel is authorized to communicate with the class members who have opted-out in order to advise them of their limited "opt-in" right under this judgment.

6. This judgment together with the findings of fact and conclusions of law shall constitute the final judgment of this Court in this matter. The Court shall retain jurisdiction to determine attorneys' fees and expenses, and with respect to future performance of, and any claims relating to performance of, the Settlement agreement and judgment.

SO ORDERED this 31st day of March, 1995

s/ Charles R. Butler, Jr.
Charles R. Butler, Jr.
Chief District Judge

APPENDIX N — AMENDMENT TO PLAINTIFFS' ORIGINAL CLASS ACTION PETITION DATED SEPTEMBER 8, 1998

NO. 43,620 DIV.: D

18TH JUDICIAL DIST. COURT

PARISH OF IBERVILLE

STATE OF LOUISIANA

HURLEY HENSON, PHILIP HANO,
JOE BOWMAN, RANDALL SEVARIO,
SR., BETTY HANO, DAVID GRAY,
RANDALL SEVARIO, JR.

VERSUS

CIBA-GEIGY CORPORATION,
ROBERT BABB, EDEE TEMPLET,
KENNETH A. DEVUN

AMENDMENT TO PLAINTIFFS' ORIGINAL CLASS ACTION PETITION

NOW INTO COURT, through undersigned counsel, comes lead plaintiffs, Hurley Henson, a person of the full age of majority who respectfully moves this honorable court to grant him leave to amend his original petition representing that:

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GENERAL

On August 8, 1998 this honorable court ordered that the plaintiff in this matter amend his original petition on basis of the following established facts:

1. that the court found that, Geigy workers' causes of action stems from their on the job exposure to the chemical substance Atrazine and chlordimeform as well as other chemicals as commercially known as Galecron, and their (Geigy Workers) contracting of Bladder Cancer, or any of the limited medical conditions has been settled as a result of the provision of stipulations included in the settlement of the federal class action entitled Russell Price, et. al v. Ciba Geigy, et. al. (CASE NO. 94-0647-CB-S Southern District of Alabama) (Price).

2. the court further orally ordered that the plaintiffs amend their original petition deleting all references to the settled matters (causes) in, and pursuant to, Price.

Wherefore, plaintiff Hurley Henson on behalf of himself and his family members as well as all putative class members, by counsel, submits the following in amendment to his original petition to read as follow:

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Original Paragraph 1.

unchanged

Made defendants herein are the following:

1. CIBA-GEIGY CORPORATION, a foreign corporation authorized to do and doing business in the State of Louisiana who has appointed an agent for service of process in Louisiana to-wit: THE PRENTICE HALL CORPORATION SYSTEMS, INC., 203 Carondolet Street, Suite 811, New Orleans, Louisiana 70130;

2. ROBERT BABB, a person of the full age of majority who can be served at 3905 Highway 75, St. Gabriel, Louisiana 70776;

3. EDEE TEMPLET, a person of the full age of majority who can be served at 8872 Bayside Avenue, Baton Rouge, Louisiana 70806; and

4. KENNETH A. DEVUN, a person of the full age of majority who can be served at 3905 Highway 75, St. Gabriel, Louisiana 70776;

Each of whom are justly and truly indebted, jointly, severally, and in solido unto the class of plaintiffs herein in an amount which will reasonably compensate each class member for there personal injury, mental and emotional damage, economic loss, past, present and future medical expenses, punitive damages, and judicial interest from date of judicial demand until paid and for all cost of this litigation, for the following, to wit:

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Original Paragraph 2.

Changed to read as follows

This class action is on behalf of Hurley Henson, Phillip Hano, Joe Bowman, Randall Sevrio, Sr., Betty Hano, David Gray, and Randall Sevario, Jr., and all other individuals who have worked at the Ciba-Geigy, St. Gabriel, Iberville Parish, Louisiana, Chemical Production Facilities, these individuals as well as their "immediate" family members were exposed to toxics, noxius, and carcinogenic chemicals including, but not limited to, Atrazin and Atrazine and chlordimeform as well as other chemicals.

Original Paragraph 3.

Unchanged

Plaintiffs, Hurley Henson, Phillip Hano, Joe Bowman, Randall Sevario, Sr., Betty Hano, David Gray, and Randall Sevario, Jr., worked at various times between 1975 and the present at Ciba-Geigy's Atrazine and chlordimeform as well as other chemicals facility in St. Gabreil, Iberville Parish, Louisiana. During their employment, the plaintiffs were employed by various contacting companies providing specialized services at the Ciba-Geigy plant in St. Gabriel, Iberville Parish, Louisiana. These services were not part of the trade business or occupation of Ciba-Geigy as defined in *Berry v. Holston Well Service, Inc.*, 488 So. 2d 934 (La. 1986).

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Original Paragraph 4.

Changed to read as follows

During their employment at the Ciba-Geigy plant, plaintiffs, Hurley Henson, Phillip Hano, Joe Bowman, Randall Sevario, Sr., Betty Hano, David Gray, and Randall Sevario, Jr., as well as their family members, together with other class members, were exposed to various toxic and carcinogenic chemicals, including, but not limited to, Atrazine and chlordimeform as well as other chemicals and atrazine. Plaintiffs' Hurley Henson, Phillip Hano, Joe Bowman, Randall Sevario, Sr., Betty Hano, David Gray, and Randall Sevario, Jr., and all other class members' exposure to these noxious and carcinogenic chemicals were a substantial contributing causes to their injuries and damages as described herein. Plaintiff Hurley Henson further submits that workers causes of action (only) for their direct exposure to Atrazine and chlordimeform as well as other chemicals as commercially known as Galecron has been settled to the extent permitted by law and for all medical conditions as defined and included in the Price settlement.

Original Paragraph 5.

Changed to read as follows

As a result of such exposures, the plaintiffs, and all other class members, are at a substantial increased risk of developing severe, debilitating, and incurable occupational diseases, none occupational diseases, to include, but not limited to, bladder cancer, kidney cancer, transitional cell

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carcinoma, sarcomas, leukemias, lymphomas, disorders of the hematopoietic system, disorder of lymphatic system, hemorrhagic cysittis, damage to the heart muscles and kidney muscles, heart attacks, heart and kidney failure, stomach cancer, brain cancer, diseases of the circulatory system, and hematuria. These diseases will result in debilitating and excruciating pain. These diseases lead to the death of number of workers as well as their family members.

Original Paragraph 6.

Changed to read as follows

These occupational diseases as well as none occupational diseases, are not readily discoverable by the plaintiffs without adequate medical monitoring and screening. The early detection of these malignant conditions are essentially the only chance the plaintiffs and/or contributed to by their exposure to the noxious and carcinogenic chemicals, including, but not limited to, Atrazine and Atrazine and chlordimeform as well as other chemicals, while they were working at the Ciba-Geigy chemical production facilities in St. Gabreil, Louisiana.

Original Paragraph 7.

Changed to read as follows

Plaintiffs and other class members have suffered loss of earning capacity and/or lost wages and have obligated to incur, and will incur in the future, expenses amounting to considerable sums of money for medical and hospitalization

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care and related expenses, all in which were caused and/or contributed to by their exposure to the noxious and carcinogenic chemicals, including, but not limited to, Atrazine and chlordimeform as well as other chemicals, while they were working at the Ciba-Geigy chemical production facilities in St. Gabriel, Louisiana.

Original Paragraph 8.

Changed to read as follows

Defendants, Ciba-Geigy Corporation, Robert Babb, Edee Templet and Kenneth A. Devun, knew or should have known, that the chemicals they prepared, manufactured, distributed, sold, handled, transported, and/or used were delictus, poisonous, carcinogenic, and highly harmful to the body and health of the plaintiffs and all other class members. Notwithstanding this, defendants, with conscious indifference to the well being of the plaintiffs and all other class members, failed to take even the slightest care, failed to take any reasonable precaution or to warn plaintiffs and all other class members of the danger and harm to which they were exposed and transmitted to other class members while handling and working in close proximity to noxious and carcinogenic chemicals located at the defendant, Ciba-Geigy's, St. Gabriel facility, including, but not limited to, Atrazine, Atrazine and chlordimeform as well as other chemicals and/or Atrazine and chlordimeform as well as other chemicals metabolites.

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Original Paragraph 9.

Changed to read as follows

Defendants knew or should have known that the chemicals they prepared, manufactured, distributed, sold, handled, transported, and/or used were delictus, poisonous, carcinogenic, and highly harmful to the plaintiffs' and all other class members' bodies and health and that the plaintiffs and all other class members would not know of these dangerous propensities. Notwithstanding this defendants, with conscious indifference to the well being of the plaintiffs and all other class members, wholly failed and omitted to provide the plaintiffs and other class members with sufficient wearing apparel and proper protective equipment, or with appliances to protect themselves from being poisoned and injured by exposure to such chemicals. Defendants further failed to take the proper measures to assure the workers none transmittals of the residue of said chemicals to their immediate family members class members herein.

Original Paragraph 10.

Changed to read as follows

Defendants, knew or should have known, that the chemicals, including, but not limited to, Atrazine, Atrazine and chlordimeform as well as other chemicals and/or Atrazine and Atrazine and chlordimeform as well as other chemicals metabolites, were delictus, poisonous, carcinogenic, and highly harmful to the plaintiffs' and all other class members' bodies and health. Notwithstanding this, defendants with

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conscious indifference to the well being of the plaintiffs and all other class members, manufactured, processed, formulated, stored, transported, and/or used these chemicals so that in their ordinary handling, the plaintiffs and all other class members would come into contact with and would be injured by these delictus and highly harmful carcinogenic compounds.

Original Paragraph 11.

Changed to read as follows

Defendants, knew or should have known, that the chemicals, including, but not limited to Atrazine, Atrazine and chlordimeform as well as other chemicals and/or Atrazine and Atrazine and chlordimeform as well as other chemicals metabolites, were delictus, poisonous, carcinogenic and highly harmful to the plaintiffs' and all other class members' bodies and health. Notwithstanding this, defendants with conscious indifference to the well being of the plaintiffs and all other class members, wholly failed to take even the slightest care to warn the plaintiffs or other class members of said danger and/or to instruct the plaintiffs or other class members in the proper handling of the chemicals or to take any care to protect the plaintiffs and/or other class members from harm and wholly failed to take the slightest care to adopt and enforce a safe plan and method of handling and working near the chemicals.

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Original Paragraph 12.
unchanged

Defendants with conscience indifference to the well being of the plaintiffs and all other class members, failed to take even the slightest care in discharging their duty to examine available research material, complied by experts, pertaining to the dangerous nature of the chemicals and act therein to render their use and handling by the plaintiffs and all other class members, as safe as could be reasonably done under the circumstances prior to subjecting the plaintiffs and all other class members to exposure to the chemicals.

Original Paragraph 13.

Changed to read as follows

Plaintiffs and all other class members would further show that at all material times, mentioned herein, the defendants were fully aware of their chemical emissions and that said defendants released toxic chemicals into the ambient air and water knowing that such contaminants would be inhaled and/or ingested by persons such as the plaintiffs and other class members. Plaintiffs and all other class members would further show that defendants actually or constructively knew, or should have known, that their chemicals had the potential for causing cancer and/or chronic diseases that could result in death or serious bodily injury, including the diseases of transitional cell carcinoma, bladder cancer, kidney cancer, leukemia, lymphoma, disorders of the hemorrhagic system, disorders of lymphatic system, sarcomas, hemeragic cystitis and hematuria among other diseases as enumerated herein.

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Original Paragraph 14.

Unchanged

Plaintiffs and all other members would further show that at all material times mentioned herein, the defendants were fully aware of their chemical emissions and that said defendants released toxic chemicals into the ambient air and water knowing that such contaminants would be inhaled and/or ingested by persons such as the plaintiffs and other class members. Defendants further show that the defendants, actually or constructively knew, or should have known, that adequate medical monitoring and screening was required in order to protect the plaintiffs' and other class members' good health. Additionally, plaintiffs would show that the defendants knew, or should have known that such medical monitoring and/or screening was essential for the early detection of a malignant condition and/or adverse health effects associated with exposure to this chemical was essentially the only chance that the plaintiffs and/or other class members would have for a cure and/or survival.

Original paragraph 15.

Changed to read as follows

Plaintiffs would further show that the defendants are jointly and separately liable for the bodily harm as well as property damages suffered by the plaintiffs and/or other class members, which resulted from such emissions and which such emissions are the producing or proximate cause. Plaintiffs and all other class members would further show

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that the aforesaid diseases causing contaminants contained such chemicals constituted abnormally hazardous substances and ultra hazardous substances and were unreasonably dangerous per se.

Original Paragraph 16.

Unchanged

Plaintiffs and all other members would further show that the defendants were negligent in failing to warn the plaintiffs and other class members, and other similarly situated of the release of these carcinogenic chemicals including, but not limited to Atrazine and chlordimeform as well as other chemicals and/or Atrazine and chlordimeform as well as other chemicals metabolites, and other toxic and carcinogenic chemicals. Defendants had a duty to warn the plaintiffs and all other class members of the presence of the toxicological properties of these noxious materials.

Original Paragraph 17.

Changed to read as follows

Defendants were also negligent in their failure to test the environment to establish the concentration of these toxic and carcinogenic chemicals in the breathing zone of the plaintiffs and/or all other class members. Defendants further failed to test the soil and drinking waters as well as the surrounding environment to their production plant located at St. Gabriel Louisiana, as well as other production facilities located in the surrounding areas.

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THEORY OF RECOVERY AGAINST DEFENDANTS BASED UPON DEFENDANTS' FAILURE TO USE ALTERNATE PRODUCTS OR DESIGNS

Original Paragraph 18.

Unchanged

Defendants' products were unreasonably dangerous because of their design for the following reasons:

(a) As the manufacturers of potentially dangerous products, defendants were held to the knowledge of experts. They were required by the law to keep abreast of scientific knowledge, discoveries and advances and are presumed to know what is imparted thereby. Defendants also had a duty to test and inspect their products to that extent the research and experiments must have been commensurate with the dangers involved, all of which they failed to do.

(b) Even if a reasonable person would conclude that the danger in fact of the defendants' products did not outweigh the utility of those products there were feasible ways to design defendants' products with less harmful consequences. Defendants are held to the standard and skill of experts and should have been aware of the feasibility and of the utilization of these alternate designs, yet they failed to do so.

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(c) Even if a reasonable person would not conclude that the danger in fact of the defendants' products did rot outweigh the utility of those products, defendants, held to the standard and skill of experts, should have reasonably known of the dangers inherent to the use of Atrazine and chlordimeform as well as other chemicals and/or Atrazine and chlordimeform as well as other chemicals metabolites and could have feasible utilized alternate designs with less harmful consequences, which they failed to do.

THEORY OF RECOVERY AGAINST THE DEFENDANTS BASED UPON THEIR FAILURE TO WARN

Original Paragraph 19.

Changed to read as follows

Defendants failed to adequately warn the plaintiffs and other class members concerning all dangers relative to the way their products were designed. Specifically, defendants failed to provide the plaintiffs and other class members with adequate warning of the dangers inherent in the normal use of their products which were not within the knowledge of or obvious to the ordinary user of those products. These dangers include the fact that the defendants' product were highly dangerous to the health of persons exposed to them in that they caused or contributed to the development of bladder cancer and a wide variety of other cancers in adverse health affects. Additionally, defendants failed to provide the

plaintiffs and other class members with knowledge as to what would be reasonably safe and sufficient wearing apparel or handling of same and the proper protective equipment and appliances as well as the proper measures of handling same, if the truth, there was any, to protect them from being poisoned, disabled, and killed as a result of their exposure to and/or use of defendants' products. Further, defendants failed to instruct the plaintiff and/or other class members as to the proper and safe use of their products, if such products could ever be safely used

Original Paragraph 20.

Changed to read as follows

Subsequent to the time that the defendants caused their Atrazine and Atrazine and chlordimeform as well as other chemicals and/or Atrazine and Atrazine and chlordimeform as well as other chemicals metabolites, as well as other chemicals, to be stored, manufactured, sold, transported, handled, marketed and/or distributed and placed where the plaintiffs and/or other class members, would be exposed to them, the defendants continued to acquire additional knowledge of the dangers caused by their product. This increased knowledge included the knowledge that exposure to even a small amount of Atrazine and Atrazine and chlordimeform as well as other chemicals and/or Atrazine and Atrazine and chlordimeform as well as other chemicals metabolites would cause serious and permanent injury. Nonetheless, the defendants have negligently and recklessly failed and refused to warn and advise plaintiffs and other class members of the dangers caused by their past exposure

to the defendants' defective products, which they had reason to know were in place on plaintiffs' and other class members' work site and was transported to their homes, and in the plaintiffs' and other class members' breathing zone during off-hours and have refused to warn and advise of the dangers caused by their products to the health and welfare of persons coming into contact and breathing such products even years after they have been exposed to them. Despite the defendants' knowledge that Atrazine and chlordimeform as well as other chemicals had contaminated the environment where the plaintiffs and other class members were required to work and live, even in the present time. The defendants possessed with information uniquely available to them relating to the dangerous effects of continued exposure to Atrazine and Atrazine and chlordimeform as well as other chemicals, have refused or neglected to provide such information to the plaintiffs and other class members, or to the public at large. Defendants have deliberately, intentionally and purposely withheld such information from the plaintiffs and other class members thus denying them the knowledge with which to take necessary safe precautions, such as medical examinations or avoiding further exposure to Atrazine and Atrazine and chlordimeform as well as other chemicals, the carcinogenic effects of which defendants have longed since learned, specifically, even to the present time, the defendants have absolutely failed to warn persons such as the Plaintiffs and/or other class members, who defendants knew were likely exposed to their Atrazine and Atrazine and chlordimeform as well as other chemicals, of the need of continued and regular health monitoring due to prior Atrazine and chlordimeform as well as other chemicals and/or Atrazine and chlordimeform as well as other chemicals metabolites exposure; defendants have intentionally delayed the use of warning on their Atrazine and

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chlordimeform as well as other chemicals and failed to advise plaintiffs and other class members exposed to their product in the past, of the medical findings known to the defendants concerning the dangers of Atrazine and chlordimeform as well as other chemicals exposure; defendants have suppressed the dissemination of information to the plaintiffs and other class members and falsely represented facts to the plaintiffs and other class members concerning the dangers of present and past exposure to Atrazine and chlordimeform as well as other chemicals. Defendants' failure to warn and intentional misrepresentations took place before, during, and after the plaintiffs and other class members were exposed to Atrazine and chlordimeform as well as other chemicals which the defendants manufactured. Defendants breech of their post-sale duty to warn plaintiffs and other class members of the dangers posed by the exposure to the defendants' Atrazine and chlordimeform as well as other chemicals was the proximate cause or a substantial contributing cause to the plaintiffs' and/or class members cancers and/or other ill health affects and the resulting damages therefrom.

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THEORY OF RECOVERY AGAINST DEFENDANTS BASED UPON THE MANUFACTURING AND SUPPLYING OF PRODUCTS WHICH WERE UNREASONABLY DANGEROUS PER SE

Original Paragraph 21.

Unchanged

Although the defendants' products were unreasonably dangerous because of their defective design and because of the defendants' failure to warn, even if the risk of the hazards related to the use of the defendants' product were not discoverable under existing technology at the time they were designed and marketed, defendants' products were unreasonably dangerous *per se* because of the inherent dangerous characteristics of those products, including their inherent dangerous construction, composition and design. Whether or not the defendants actually perceived or could have perceived the dangers of their products at the time they were designed and marketed, a reasonable person would conclude that the danger in fact of those products, whether foreseeable or not, actually outweighed the benefit which flowed from their use.

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THEORY OF RECOVERY AGAINST THE DEFENDANTS FOR INTENTIONAL AND WILLFUL CONDUCT

Original Paragraph 22.

Unchanged

With conscience indifference and disregard for the safety of the plaintiffs and other class members who were exposed to the products which the defendant manufactured, advertised, handled, formulated, marketed, transported, stored, and/or sold, the defendants acted through their servants, employees, representatives, and agents, placed their products on the market to be purchased and used by the public when defendants knew that exposure to or use of their Atrazine and chlorodimeform could and would cause severe personal injury and cancer to the plaintiffs and other class members exposed to the products.

Original Paragraph 23.

Changed to read as follows

Defendants, at all times hereto mentioned, knew that their Atrazine and chlorodimeform and the component parts and accessories thereof, were defective, and that defendants, individually, intentionally, willfully, and knowingly placed them on the market when they knew that their products would be handled by or used in the vicinity of persons such as the plaintiffs and/or other class members who had absolutely no knowledge of the dangers involved.

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Original Paragraph 24.

Unchanged

Defendants implicity represented by placing their products on the market, that their products could safely be used for the purposes for which they were manufactured and could safely be used and handled by individuals and/or employees of various industries.

Original Paragraph 25.

Changed to read as follows

In research, testing, manufacturing, distributing, labeling and marketing their product, defendants did so with conscious disregard for the safety of the users of those products in that the defendants had specific prior knowledge that there was a high risk of injury or death resulting from exposure to or use of their product, including, but not limited to bladder, kidney, stomach, liver, and other forms of cancers and other ill health effects. This knowledge was obtained, in part, from scientific studies and medical data to which the defendants had access and knowledge. Despite their knowledge of the dangers involved, defendants continued to manufacture and distribute their products without attempting to protect users from or warn users of the high risk of injury and/or death resulting from exposure to their product.

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Original Paragraph 26.

Unchanged

Defendants' intentional misconduct was motivated by their financial interest in the continuing uninterrupted distribution and marketing of their products. In pursuit of this financial motivation, defendants with a willful, wanton and conscious disregard for the safety of the users of their products, and were, in fact, consciously willing to permit their products to cause injury to persons, such as the plaintiffs and other class members, whom they knew were or would be in exposed to their products without having any idea of the risk involved.

Original Paragraph 27.

Changed to read as follows

Prior to placing their defective products on the market, defendants knew and possessed medical and scientific data and other knowledge that clearly indicated that Atrazine and chlordimeform as well as other chemicals were hazardous to the health and safety of individuals exposed to it, such as the plaintiffs and other class members. Defendants had specific prior knowledge that there was a high risk of injury or death resulting from exposure to Atrazine and chlordimeform as well as other chemicals including, but not limited to, the development of leukemia, lymphoma, bladder cancer, kidney cancer, transitional cell carcinoma, sarcoma, disorders of the hemopoietic system, disorder of the lymphatic system, hemorrhagic cystitis, cystitis and other adverse health effects

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and/or other forms of cancer. This knowledge was obtained, in part, from scientific studies and medical data to which the defendants had access, as well as scientific studies performed by, at the request of, or at the insistence of the defendants. With the intent to deceive the plaintiffs and/or other class members, and with the intently should remain ignorant of such medical and scientific data and with further intent to induce the plaintiffs to alter their medical position regarding their injuries and/or risk, and in order to gain an advantage, the defendants committed the following acts of fraudulent concealment:

(a) Defendants did deliberately cause to be suggested as a fact to the plaintiffs and other class members, by not placing warning labels on their products, that it was safe for the plaintiffs and other class members to use or work in close proximity with such materials;

(b) Defendants deliberately concealed the hazardous nature of their product from the plaintiffs and other class members by concealing the fact that Atrazine and chlordimeform brings pathological effects without noticeable trauma, when defendants were possessed with knowledge that such materials were dangerous and a threat to the health of persons coming in contact therewith and had a duty to disclose such fact to the plaintiffs and other class members;

(c) Defendants deliberately failed to provide the plaintiffs and other class members with or even

recommend the use of respirators or other protective devices when they were required to use or when they would be exposed to defendants' products even though defendants knew that such protective measures were necessary, and had a duty to advise plaintiffs and other class members that, if such protective devices were not used, it would result in injury and/or death;

(d) Defendants deliberately concealed from the plaintiffs and other class numbers the true nature of their exposure to their products, in that defendants knew the true nature of their exposure to their products, in that defendants knew that the plaintiffs and other class members, upon exposure to Atrazine and chlordimeform as well as other chemicals would in time develop cancers to include bladder cancer, kidney cancer, leukemia, lymphoma, disorders of transitional cell carcinoma, sarcomas, and would immediately be in danger of ill health, possible death, and concealed the fact that the plaintiffs and other class members had in fact been exposed to harmful materials contained in their products and concealed the fact that the material to which the plaintiffs and other class members were exposed would cause pathological effects without noticeable trauma;

(e) Defendants deliberately failed to provide medical and scientific information to the public at large as to the true nature of the hazards associated with Atrazine and chlordimeform as well as other

chemicals and actively concealed such known medical and knowledge from the public and the plaintiffs and/or other class members until they were forced to disclose such information by the Environmental Protection Agency;

(f) The aforementioned fraudulent concealment by defendants of the true nature of the hazards resulting from exposure to the Atrazine and chlordimeform as well as other chemicals contributed causing the plaintiffs and/or other class members to develop cancers and other ill harm effects.

(g)

THEORY OF RECOVERY AGAINST THE DEFENDANTS AS A RESULT OF THEIR INTENTIONAL ACTS

Original Paragraph 28.

Unchanged

On information and belief defendants were responsible to provide the plaintiffs and other class members with proper supervision, safety instruction, and warnings concerning the hazardous conditions in the work place, and generally to provide the plaintiffs and other class members with a safe work place reasonably necessary to protect the life, health, safety, and welfare of the plaintiffs and other class members.

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Original Paragraph 29.

Changed to read as follows

Robert Babb, Edee Templett, and Kenneth A. Devun, in their capacity as design engineer, plant manager, safety and health managers for Ciba-Geigy, actually undertook to perform the following duties:

(a) Inspection, approval and supervision of the work of the plaintiffs and other class members;

(b) To see that proper safety rules were adopted, promulgated and enforced concerning the use of respiratory protection devises;

(c) To see that the plaintiffs and other class members his co-workers performed their duties pertaining to their work in a proper, safe, and workman-like-manner;

(d) To see that the plaintiffs and other class members used safe and sound principles and practices in their work;

(e) To make health and hygiene decisions on any and all questions regarding the use of respiratory protection devices;

(f) To keep abreast of state of the art knowledge as it is pertained to the dangers associated with exposure to Atrazine and chlordimeform as well as other chemicals;

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(g) To provide adequate physical examinations, safety equipment, ventilation and breathing apparatuses, where such were necessary in order to prevent the plaintiffs and other class members from being harmed by exposure to Atrazine and chlordimeform as well as other chemicals in the environment which the plaintiffs and other class members were required to work;

(h) To make certain that employees, including the plaintiff and other class members, were provided a safe working and living environment free from Atrazine and chlordimeform as well as other chemicals;

(i) To comply with applicable State and Federal regulations regulating work place exposure to Atrazine and chlordimeform as well as other chemicals including, but not limited to those regulations promulgated by the U.S. Department of Labor pursuant to the Walsh/Healy Act and the Occupational Safety and Health Act; and

(j) To provide plaintiffs and other class members with a safe place to work.

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Original Paragraph 30.

Unchanged

Not only did Robert Babb, Edee Templet, and Kenneth A. Devun have the duties and responsibilities set forth in the foregoing paragraphs above, but they actually undertook on an operational basis to perform duties and fulfill those responsibilities, and they intentionally failed to carry out those undertakings and assumed in a manner asserted in paragraph 26.

Original Paragraph 31.

Changed to read as follows

On information and belief, Robert Babb, Edee Templet and Kenneth A. Devun knew of the presence of Atrazine and chlordimeform as well as other chemicals and/or Atrazine and chlordimeform as well as other chemicals metabolites within the working environment in which the plaintiffs' and other class members were required to work and knew, or should have known, that the dangers to the plaintiffs and other class members' health from working and living in an environment polluted with Atrazine and chlordimeform as well as other chemicals without proper protection. Plaintiffs and other class members aver that Robert Babb, Edee Templet, and Kenneth A. Devun knew, or should have known, that cancers and/or other ill health effects would have been avoided by the use of adequate safety equipment and measures.

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Original Paragraph 32.

Changed to read as follows

On information and belief, Robert Babb, Edee Templet and Kenneth A. Devun intentionally failed to perform their responsibilities and/or actual undertaking to provide the plaintiffs and other class members with a safe place to work in the following particulars:

(a) Intentionally failing to provide periodic medical examinations to the plaintiffs;

(b) Intentionally failing to properly ventilate the area in which the plaintiffs were required to work;

(c) Intentionally failing to provide safety appliances, including, but not limited to respirator, air-fed hoods, gloves, protective clothing, etc., for the plaintiffs' use;

(d) Intentionally failing to institute safety procedures and plans for the adequate protection of the plaintiffs;

(e) Intentionally failing to warn the plaintiffs of the dangers posed by the polluted atmosphere in which they were required to work including, but not limited to the risk of cancer and the carcinogenic effects caused by exposure to Atrazine and chlordimeform as well as other chemicals;

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(f) Intentionally failing to enforce applicable safety rules after such rules were actually adopted;

(g) Intentionally failing to keep abreast of scientific and engineering knowledge regarding the dangers of, and protection against, occupational exposure to Atrazine and chlordimeform as well as other chemicals;

(h) Intentionally failing to properly supervise operations;

(i) Commencing and continuation of operations which were under their control and supervision when they knew, or should have known, that such operations would cause the plaintiffs and other class members to be exposed to Atrazine and chlordimeform as well as other chemicals, without protection, on a daily basis;

(j) Intentionally failing to abide by applicable State and Federal regulations pertaining to work place exposure to Atrazine and chlordimeform as well as other chemicals including, but not limited to those regulations promulgated by the U.S. Department of Labor and the Occupational Safety and Health Acts;

(k) Intentionally failing to measure the levels of Atrazine and chlordimeform as well as other chemicals in the plaintiffs' work environment;

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(l) Intentionally misleading the plaintiffs as to the true nature of their health problems;

(m) Other intentional acts which may be discovered subsequent to the filing of this class action and/or may be proven at the time of trial.

Original Paragraph 33.

Unchanged

The aforementioned intentional acts of Robert Babb, Edee Templet, and Kenneth A. Devun were substantial contributing factors in causing the damages suffered by the plaintiffs and other class members. Other class members, to include but not limited to leukemia, lymphoma, bladder cancer, kidney cancer, disorders of the hemopoietic system, disorder of the lymphatic system, transitional cell carcinoma, sarcoma, hemorrhagic cystitis, and cystitis and/or other ill health effects.

THEORY OF RECOVERY AGAINST CIBA-GEIGY AND ITS EXECUTIVE OFFICERS BASED UPON INTENTIONAL MISCONDUCT

Original Paragraph 34.

Changed to read as follows

Defendants, Ciba-Geigy and its executive officers exposed the plaintiffs and other class members to Atrazine and chlordimeform as well as other chemicals at Ciba-Geigy's

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Iberville Parish facility from approximately 1975 until present. At all times relevant hereto, defendants were aware or should have been aware of the dangers inherent in exposure to Atrazine and chlordimeform as well as other chemicals. The defendants possessed medical and scientific data along with other knowledge, which clearly indicated that Atrazine and chlordimeform as well as other chemicals were hazardous to the health and safety of its employees, including plaintiffs and other class members herein, who were required to work and live in close proximity to Atrazine and chlordimeform as well as other chemicals.

INTENTIONAL TORT OF FRAUDULENT MISREPRESENTATION CAUSING PHYSICAL HARM

Original Paragraph 35.

Changed to read as follows

Ciba-Geigy and their executive officers had a duty to disclose and/or properly represent to the plaintiffs and/or other class members, the dangers associated with working with, and or transmittals of residues, of Atrazine and chlordimeform as well as other chemicals, the risk associated with the working at a work place polluted with Atrazine and chlordimeform as well as other chemicals, and the true medical condition of the plaintiffs and other class members as a result of working around Atrazine and chlordimeform as well as other chemicals. Yet, the defendants did not disclose to the plaintiffs any or all of this information and/or fraudulently misrepresented any and all of this information to the plaintiffs and/or other class members.

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Original Paragraph 36.

Unchanged

Because of the fraudulent misrepresentation and/or non-disclosure by the defendants, the plaintiffs and/or other class members justifiably went to work and relied on the misconception that they were not being harmed by exposure to Atrazine and chlordimeform as well as other chemicals.

Original Paragraph 37.

Unchanged

As a result of the plaintiffs' and other class members' justifiable reliance upon the defendants' nondisclosure and/or fraudulent misrepresentation, plaintiffs and/or other class members, contracted leukemia, lymphoma, bladder cancer, kidney cancer, disorders of the hemopoietic system, disorders of the lymphatic system, transitional cell carcinoma, sarcoma, hemorrhagic cystitis, and cystitis and/or other ill health effects.

Original Paragraph 38.

Unchanged

The foregoing described nondisclosure and/or fraudulent misrepresentations, constitutes deceit and makes the defendants liable to the plaintiffs and all other class members for damages for the damages caused as a result of their exposure to Atrazine and chlordimeform as well as other chemicals.

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Original Paragraph 39.

Unchanged

The defendants knew that to a reasonable degree of certainty that consequences are substantially certain to result from the aforementioned acts, but the defendants, with full knowledge of this, continued to go ahead with their fraudulent misrepresentations and concealment with their fraudulent misrepresentation and concealment of the true hazards associated with exposure to Atrazine and chlordimeform as well as other chemicals; as a result, the defendants are treated by law as if they in fact desired to make the plaintiffs and/or other class members sick.

THEORY OF RECOVERY BASED UPON AN INTENTIONAL TORT OF BATTERY

Original Paragraph 40.

Changed to read as follows

As described in the foregoing paragraphs, defendants failed to enlighten, educate, or share their knowledge with their employees, including plaintiffs and other class members, regarding the dangerous propensities of Atrazine and chlordimeform as well as other chemicals. Thus, plaintiffs and other class members were completely unaware of the dangerous propensities of Atrazine and chlordimeform as well as other chemicals; plaintiffs and other class members were not aware of the ill health effects which inevitably would result from Atrazine and chlordimeform as well as other

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chemicals exposure. Therefore, although the plaintiffs and other class members went to work voluntarily, they were unaware of their exposure to Atrazine and chlordimeform as well as other chemicals, the danger of which the defendants were fully aware. Thus, plaintiffs and/or other class members did not voluntarily subject themselves to dangers and ill health problems associated with exposure to Atrazine and chlordimeform as well as other chemicals.

Original Paragraph 41.

Changed to read as follows

Thus, defendants intentionally exposed plaintiffs and other class members to Atrazine and chlordimeform as well as other chemicals without the plaintiffs' and/or other class members' consent. Any consent to work by the plaintiffs and/or any other class member were vitiated by the defendants' concealment of scientific, medical and other data indicating the dangers of Atrazine and chlordimeform as well as other chemicals exposure. Such unconsented exposure constituted an intentional infliction of harm, offensive conduct and/or the invasion of the bodily integrity of the plaintiffs and/or other class members without the plaintiffs' or other class members' consent thereby constituting the intentional tort of battery.

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Original Paragraph 42.

Changed to read as follows

As a result of the aforementioned battery, the defendants are liable unto the plaintiffs and all other class members for all damages, foreseen and unforeseen, suffered by the plaintiffs or other class members as a result of their exposure to Atrazine and chlordimeform as well as other chemicals.

Original Paragraph 43.

Changed to read as follows

In addition to fraudulent misrepresentation causing physical harm and battery, defendants committed the following intentional acts which caused the plaintiffs and/or other class members to suffer ill health effects as a result of their exposure to Atrazine and chlordimeform as well as other chemicals;

(a) Intentionally failing to provide necessary protection to plaintiffs;

(b) Intentionally failing to provide safety equipment as required by safety statutes;

(c) Intentionally failing to provide clean, respirable air, and proper ventilation;

(d) Intentionally failing to provide proper medical monitoring;

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(e) Intentionally failing to monitor the extent and output of Atrazine and chlordimeform as well as other chemicals into the work place;

(f) Intentionally failing to warn the plaintiffs and other workers of the dangers associated with Atrazine and chlordimeform as well as other chemicals;

(g) Intentionally inducing the plaintiffs and other workers to work in a work place polluted with Atrazine and chlordimeform as well as other chemicals;

(h) Intentionally failing to keep Atrazine and chlordimeform as well as other chemicals output in the work place at safe levels, and allowing the transmittal of same to the workers homes and other.

Original Paragraph 44.

Changed to read as follows

By committing the foregoing acts, the defendants consciously desired that the plaintiffs suffer a Atrazine and chlordimeform as well as other chemicals induced disease. Moreover, as a result of these acts, defendants knew that it was substantially certain that the plaintiffs and/or other class members would suffer Atrazine and chlordimeform as well as other chemicals diseases including, but not limited to bladder cancer, leukemia, lymphoma, kidney cancer, disorders of the hemopoietic system, disorders of the lymphatic system, transitional cell carcinoma, sarcoma, hemorrhagic cystitis, and cystitis.

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THEORY OF RECOVERY AGAINST THE DEFENDANTS BASED UPON INTENTIONAL TORT OF OUTRAGE

Original Paragraph 45.

Changed to read as follows

The aforedescribed negligent and intentional acts committed by these defendants in their failure to disseminate medical and scientific information concerning the true nature of the hazards associated with exposure to Atrazine and chlordimeform as well as other chemicals; together with, their knowledge that the plaintiffs and/or other class members were required to work and live in an environment polluted by Atrazine and chlordimeform as well as other chemicals manufactured, marketed, formulated, stored, sold, transported and/or distributed by them, is so egregious as to shock the conscience of the reasonable man and the public at large thereby constituting the intentional tort of outrage.

EXEMPLARY DAMAGES

Original Paragraph 46.

Changed to read as follows

In addition to general and special damages, plaintiffs and/or other class members are entitled to an award of exemplary damages as a result of injuries which were caused by the defendants' willful, wanton, reckless and/or intentional disregard for their safety and the public safety in their storage,

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handling, manufacturing, formulating, marketing, transporting and/or storage of dangerous and carcinogenic chemical, including, but not limited to Atrazine and chlordimeform as well as other chemicals and/or Atrazine and chlordimeform as well as other chemicals metabolites, and various other toxic and carcinogenic chemicals and hazardous toxic substances as described above. Plaintiffs therefore request that exemplary damages, in an amount which the evidence may show proper at the time of trial, be awarded to the plaintiffs and against the defendants, jointly, individually and in solido.

DAMAGES SUSTAINED BY PLAINTIFFS

Original Paragraph 47.

Unchanged

Plaintiffs and all members of the class have suffered irreparable harm and damages as a result of the defendants' unlawful and wrongful conduct.

CLASS ACTION

Original Paragraph 48.

Changed to read as follows

Plaintiffs are entitled to have this caused action maintained as a class action, pursuant to the Louisiana Code of Civil Procedure, Article 591, et seq., for the following reasons:

(a) The persons or entities constituted in the class are so numerous that the individual joinder of all parties is impractical;

(b) There exist a common character among the rights sought to be enforced among the class representatives in the unknown members of the class;

(c) The named plaintiffs or representatives of the class and members of the class are so situated as to provide adequate representation for the unknown class members;

(d) The great majority of the unnamed class members have no substantial interest in individually controlling the prosecution of their suffered action;

(e) There are common questions and issues of law and fact involved in this matter which predominate over questions affecting individual class members;

(f) Any defense or theories of resistance of liabilities set forth by the defendants will be applied to all claims presented by all members of the class;

(g) Prosecutions and suffered actions by individual class members which create a serious risk of inconsistency of varying adjudications which may prejudicially affect the claims of other class members in subsequent litigation;

(h) The prosecution of suffered actions by individual class members possesses the risk that suffered adjudication's respecting individual claimants would not entirely positive of the interest of class members not parties to the litigation or would otherwise substantially impair or impede the ability of the class members to protect their interest;

(i) The class action is a superior procedural vehicle for this litigation because the primary objective of the class actions, the economies of time, efforts and expense would be achieved;

(j) The vehicle of the class action may be more easily managed than some other procedural vehicle considering the opportunity to afford reasonable notice of sufficient phrases of the litigation, including discovery, including, but not limited to discovery, to class members.

Original Paragraph 49.

Unchanged

Each of the main plaintiffs, individual damages are not substantially different from the damages from other members other representative class. Petitioners will fully and adequately protect the interest of the other members of their representative class, who are too numerous to be named individually and to individually appear in these proceedings.

Original Paragraph 50.

Unchanged

There is a well defined community of interest in questions of law in the fact affecting the parties to be represented; the claims or defenses or defenses of the representative parties are typical of the claims or defenses applicable to the entire class; the question of law in fact

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applicable to the entire class predominate over questions which may affect individual members' rights to recover for causes of action as set forth herein.

Original Paragraph 51.

Unchanged

The plaintiffs are asserting claims that are typical of the claims of the entire class of plaintiffs of the entire class of plaintiffs will fairly and adequately represent and protect the interest of the class in that they have no interest antagonistic to those in the class.

Original Paragraph 52.

Unchanged

The plaintiffs have retained counsel who are competent in the prosecution of this type of litigation.

Original Paragraph 53.

Unchanged

The plaintiffs or members of the class who have suffered irreparable harm and damages as a result of the defendant unlawful and wrongful and intentional acts. Absent in class action, defendants will likely retain millions of dollars in profits as a result of their wrong doing to the detriment of the injured victims.

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Original Paragraph 54.

Unchanged

Because of the size of the individual class members' claim, few, if any, class members could afford to seek legal action for the wrong complained of herein. Absent in class action, the class members will continue to suffer losses and allow these willful wanton, intentional and unlawful violations to proceed without remedy and allow defendants to retain the proceeds of their ill gotten gain.

WHEREFORE, plaintiffs pray on their behalf individually, and on behalf of all others similarly situated that the defendants be cited to appear and answer this petition and that after due proceedings have, that there be a judgment entered herein as follows;

1. That an Order be entered herein certifying this action and maintaining this action as a class action;

2. That the plaintiffs and class members herein be awarded compensatory damages in an amount to be proven at trial for each named plaintiff and for each member of the plaintiffs class;

3. For such reasonable attorneys fees as may be authorized by the law of the State of Louisiana; for all costs of this litigation together with legal interest thereon from the date of the lost to each plaintiff a..d/or class member, or alternatively, from the date of judicial demand;

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4. That the plaintiffs and class members herein be awarded exemplary damages in an amount to be proven at trial for each of the named plaintiffs and for each member of the plaintiffs class.

5. For all other Legal and Equitable relief,

Respectfully Submitted,

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HANY A. ZOHDY,
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AMENDMENT TO
PLAINTIFFS' ORIGINAL
CLASS ACTION PETITION

ORDER

THE COURT CONSIDERING PLAINTIFF'S MOTION FOR LEAVE TO AMEND ORIGINAL PETITION,

ORDERED, that plaintiff's motion is hereby GRANTED, and that the foregoing amendment to the original petition is entered into the record of these proceedings.

Thus ordered and signed this 8th day of 1998 in the parish of Iberville, state of Louisiana.

s/ Jack T. Marionneaux
JUDGE,
The 18th Judicial District Court